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## Comments of REC Networks – MM Docket 99-25

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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC

In the matter of: )  
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Creation of a Low Power Radio Service ) MM Docket-99-25  
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### **COMMENTS OF REC NETWORKS**

May 7, 2012

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**I. INTRODUCTION**

1. REC Networks (“REC”), an unincorporated entity through its founder Michelle (Michi) Eyre is a long-time proponent for the Low Power FM (LPFM) radio service from the original petitions for the service through today and into the future. REC is best known for our free self-service broadcast tools including the Low Power FM Search Tool as well as providing education regarding the Low Power FM Radio Service as well as other broadcast services<sup>1</sup>. REC believes in a citizen’s access to the airwaves.

2. In this pleading, we will address many of the questions that were raised by the Commission regarding various changes to the LPFM service. We will discuss the handling of third adjacent channels to implement section 7 of the Local Community Radio Act (“LCRA”)<sup>2</sup>, second adjacent channel waivers, interference mitigation, increasing LP10 to 50 watts, a new 250 watt LPFM service, I.F. channel protections, Native Nations, translators for LPFM licensees, student operated LPFM stations, consortia and an extensive overhaul to the point system and time sharing processes. We feel that our proposed changes will encourage community ownership by providing incentives to those providing a bona-fide local service while discouraging licensing abuses<sup>3</sup>

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<sup>1</sup> - <http://www.recnet.com/lpfm> - <http://lpfm.ws> – <http://lpfm2012.com>

<sup>2</sup> - Pub. L. No. 111-371, 124 Stat. 4072 (2011).

<sup>3</sup> - FNPRM at 1.

## II. THIRD-ADJACENT CHANNEL

### A. References and Definitions

3. *References to third adjacent channel protections in the rules.* The Commission requests comments on whether the third-adjacent channel spacing protections should be maintained in §73.807 or placed elsewhere<sup>4</sup>. While we acknowledge that §73.807 also codifies other “non-binding” distances for reference purposes (such as co-channel and first adjacent channel recommended distances for fully spaced LPFM stations<sup>5</sup>), we feel that these references are very necessary but may cause confusion with new applicants. Since third-adjacent channel spacing is the same as second adjacent channel spacing for full-service domestic FM stations, it would make more sense to not put a column in for third-adjacent channel but instead, to refer to the second adjacent channel values where it comes to protecting radio reading services and determination if announcements are required in accordance with Section 7(2) of the LCRA. Foreign station distance separation charts must continue to maintain a column for third adjacent channels (especially for Canada) as these protections will still apply due to ongoing international agreements.

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<sup>4</sup> - FNPRM at 11 & 28.

<sup>5</sup> - See §73.807: “Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to operating at the maximum permitted facilities for the station class.”

4. *Protection and remediation requirements.* We agree with the Commission that Section 7(1) of the LCRA addresses LPFM stations that do not meet third-adjacent channel spacing (using the second-adjacent channel distance spacing tables) and that the LCRA refers to §74.1203 of the rules for handling in a manner similar to translators. From our reading of the LCRA, we agree with the Commission that Sections 7(1) through 7(5) apply only to third-adjacent channel interference<sup>6</sup>.

**B. Periodic on-air announcements**

5. Section 7(2) of the LCRA mandates for a period of one year that LPFM stations operating on a third adjacent channel broadcast “periodic” announcements to “alert listeners that interference they may be experiencing that they may be experiencing *could (emphasis added)* be the result of such low-power FM station on a third-adjacent channel..” and to contact the LPFM station if they are experiencing interference<sup>7</sup>. We feel that these announcements apply to Section 7(1) stations as they “do not satisfy third-adjacent channel spacing requirements”. It is our belief that the differences in references to how a LPFM station operating on a third adjacent channel in respect to a full-service FM station may be due to how the 2010 version of the LCRA was marked-up by Congress. The Local Community Radio Act of 2009<sup>8</sup> only had references to “low-power FM stations [constructed] on third-adjacent channels” and did not contain the

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<sup>6</sup> - FNPRM at 30.

<sup>7</sup> - LCRA, §7(2).

<sup>8</sup> - 111 Cong 1 HR-1147 at § 8.

language that was in the 2010 LCRA that referred to “low-power FM stations that do not satisfy third-adjacent channel spacing requirements under section 73.807 of the Commission’s rules”<sup>9</sup>.

6. *Definition of “periodic” in relation to announcements*<sup>10</sup>. Section 7(2) of the LCRA uses the word “periodic” to describe the frequency of the Section 7(2) announcements yet Congress does not define “periodic” for the sake of this Act. Merriam-Webster defines the word “periodic” as “occurring or recurring at regular intervals” and “occurring repeatedly from time to time”.<sup>11</sup> Therefore, the announcements must take place repeatedly, at regular intervals and from time to time. The public interest dictates a balance between educating radio listeners of changes in the “dialscape” as a result of the new [LPFM] station while doing it in a manner that does not confuse the listener or excessively burdens the [LPFM] broadcaster. We feel that if there is going to be any bona-fide interference to an FM facility operating on a third adjacent channel, it will be discovered in the first month of the LPFM station’s operation. Despite that, the statute requires LPFM stations to broadcast “periodic” announcements for one year. REC feels that Congress has given the Commission the authority to determine what is reasonably “periodic”. REC feels that in the first 15 days of operation on a third adjacent channel, a modified version of the post-filing renewal announcement process should be performed. This means that the LPFM station would broadcast *one* announcement between the following hours:

- 7AM to 9 AM
- 9 AM to 12 Noon

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<sup>9</sup> - LCRA, §7(1).

<sup>10</sup> - FNPRM at 35.

<sup>11</sup> - “periodic.” *Merriam-Webster.com* 2012. <http://www.merriam-webster.com> (18 Apr 2012).

- 12 Noon to 4PM
- 4PM to 6PM
- 7PM to Midnight

In days 16 through 30 of operation, a modified version of the pre-filing renewal schedule process should be used. This means that the LPFM station would broadcast *one* announcement between the following hours:

- 7AM to 9AM
- 4PM to 6PM

LPFM stations that are time-share and are not on the air during one or more of those periods would not be required to “make up” the announcement in a different time slot. On days 31 through 365 of operation, the station should broadcast the announcement once per day between 7AM and Midnight. While not required, it should be recommended that LPFM stations broadcast the daily message at staggered times during the day to assure that all audiences are reached with the message.

7. *Content of third-adjacent channel educational message.* We are concerned that the content of the message may confuse listeners, especially if the words “third-adjacent channel” are used over the air. We feel that broadcasters need to have latitude to word the message in a way to get the point across without overwhelming listeners with technical jargon. REC feels that the following announcement would be acceptable under 7(2) of the LCRA:

*“WXXX-LP is broadcasting under a special arrangement with the Federal Communications Commission. If you are normally a listener of WZZZ-FM [or WAAA-FM] and currently having difficulty receiving WZZZ-FM [or WAAA-FM], please contact our offices at 555-1212 or visit our website at [wxxx.org](http://wxxx.org)”*

8. *Language of third-adjacent channel educational message.* We feel that the message should be in the primary language of the third-adjacent full power stations involved. LPFM stations should also have the option of broadcasting the message bilingually. This also means that an LPFM station broadcasting in a foreign language on a third-adjacent channel to a full-service FM station operating in English should broadcast the educational message in English.

**C. Co-location of third-adjacent LPFM stations**

9. REC feels that in the best interest of mitigating interference, the public interest would dictate the flexibility for LPFM stations to co-locate with or operate from a site very close to the third adjacent full-service station as long as no new short spacing is created, even if this means moving the transmitter site to a location that may be outside the current service contour of the LPFM station, an action that normally must be done during a filing window on a major change application.



**D. The status of Puerto Rico in section 7(6)**

10. The Commission inquires whether Puerto Rico is considered a “state” in terms of Section 7(6) of the LCRA<sup>12</sup>. Section 7(6) requires that interference remediation protections extends to second-adjacent, first-adjacent and co-channel stations “licensed in significantly populated *States [emphasis added]* with more than 3,000,000 population and a population density greater than 1,000 people per one square mile land area”. While the overall characteristics of the territory of Puerto Rico meets this criteria, we do not believe it was Congress’ intent to include Puerto Rico as a “state” for the purpose of this legislation. Only one of the 50 United States meet this criteria, New Jersey. We note that the New Jersey Broadcasters Association (NJBA) has been very aggressive over the past decade regarding protecting New Jersey FM broadcasters. REC recognizes that New Jersey is in a unique situation where there are two significant out-of-state metro markets (New York and Philadelphia) on each side of the state. As a result, FM opportunities within the state have been historically precluded. NJBA and other advocates from the Garden State have been aggressively trying to enhance the broadcast landscape in the state as evidenced in the conditions put in place after the revocation of RKO General as the licensee of WOR-TV<sup>13</sup>. A few years ago, NJBA filed a petition with the FCC that proposed to increase the service contours of New Jersey full power FM stations in respect to LPFM and translator facilities<sup>14</sup>.

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<sup>12</sup> - FNPRM at 41.

<sup>13</sup> - See “*Petition to Reallocate VHF-TV Channel 9 from New York, New York to a City within the City Grade of WOR-TV*” – 84 FCC 2d 280, 282 (1981).

<sup>14</sup> - See RM-11099.

11. Puerto Rico is in a totally different situation. Puerto Rico and U.S. Virgin Islands FM stations have already been given special provisions to address their unique geography<sup>15</sup>. We note that Puerto Rico and the U.S. Virgin Islands already have higher distance spacing rules due to the increased size of the Class A, B1 and B service contours within the territories. We do not feel that any additional protections for Puerto Rico are necessary. We also note that the LCRA capitalizes the word “State” as to possibly identify one of the 50-U.S. States and not just the general word of “state” as an entity. In the event that Puerto Rico achieves statehood, we can readdress this issue at that time but for now, REC recognizes that this provision in the LCRA was intended to address the unique needs of the State of New Jersey only.

**E. Translator input signals**

12. The Commission has proposed several methods for addressing Section 6 of the LCRA regarding interference to the input signals of translators by LPFM stations operating on third-adjacent channels<sup>16</sup>. These methods include a simple “translator interference zone” to a very complex mathematical formula that was used in the MITRE report. REC has always felt that one advantage about the service rules for LPFM is their simplicity when compared to the rules of other broadcast and non-broadcast radio services. At the same time, we want LPFM applicants to have some flexibility.

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<sup>15</sup> - See “*St. Croix Wireless, Inc.*” – 8 FCC Rcd 7329.

<sup>16</sup> - NPRM at 44.

13. The REC LPFM Channel Search Tool already supports the Potential Interference Area (PIA) by identifying situations where the proposed LPFM site is within 2km or within 10km +/- 30 degrees true bearing from a translator with an over-the-air input on the third adjacent channel. In the past two years, the Commission's Consolidated Data Base System (CDBS) has greatly improved its support of FM translators to include actual input station and channel. However, this information is only as dependable as the translator licensees notifying the Commission of primary station changes as well as arrangement changes (such as feeding a primary station off of another translator instead of directly from the primary station<sup>17</sup>). We feel that the information in CDBS is the best that any applicant can go on and is up to the translator licensee to assure their license records are up to date.

14. We feel that the 2km and 10km PIA proposed by the Commission is acceptable. In our testing, we were not able to find many situations where a potential LPFM applicant would be in a situation where the PIA would be invoked. This is because translators are more likely to be on mountaintop and large tower environments where LPFM stations are more likely to be based at or near ground level. With that, we still endorse the use of engineering reports, especially in cases where the translator licensee cooperates with the LPFM applicant and the channel being chosen is the only LPFM opportunity for the area. REC supports the PIA as the primary method of protecting third-adjacent translator inputs and to allow the PIA to be waived by an engineering study or consent by the translator licensee.

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<sup>17</sup> - NPRM at 46.

15. *Protection of the main analog channel only.* REC is aware of several translators that are rebroadcasting multi-cast (HD-2) signals over analog translators. Because these digital sidebands are broadcasting at reduced power and are more vulnerable to interference, we are asking that these standards be limited to the reception of the primary station's main (analog) channel and not the digital main or secondary channels. We do not believe that the LCRA anticipated protection of certain ancillary services such as digital audio streams.

### **III. SECOND-ADJACENT CHANNEL**

#### **A. Application of second-adjacent channel waivers**

16. REC supports the ability for the Commission to reasonably grant second-adjacent channel waivers to both LPFM stations experiencing potential displacement as well as to new construction permits. REC feels that any channel that would support a second adjacent waiver should be available to the applicant<sup>18</sup>, even if there are “non-waiver” channels available<sup>19</sup>. It is very possible that the applicant may be requesting that channel as a part of an agreement with other LPFM applicants or the channel may be more desirable for other reasons. While REC will always recommend that an applicant specify a fully spaced channel over a second adjacent waiver, the applicant should be able to choose any available channel (waiver or non-waiver) they want. The REC LPFM Channel Search Tool will display available channels under a second

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<sup>18</sup> - FPRM at 19.

<sup>19</sup> - Channels that would meet the separation requirements of §73.807 including second adjacent channel protections.

adjacent channel waiver on a result, but we display those separate from those channels that are fully spaced, which are displayed first.

17. *Considerations when reviewing waiver requests.* For many years, REC has displayed whether a channel is predicted to receive interference from another station. We support this also in potential second adjacent channel waiver situations. Since the enactment of the LCRA, we have also placed indicators on available third adjacent channels that the channel would have been short spaced as a third adjacent channel and therefore would be subject to the on-air announcements and remediation procedures required in Section 7 of the LCRA. We feel that when considering a second adjacent channel waiver, the Commission should only look at how the proposed station will impact the second adjacent channel stations that are overlapped. We don't feel that other factors such as co-channel, first or third adjacent channel spacing should have any bearing on a *second* adjacent channel waiver. REC feels that the applicant should have the flexibility to choose the channel that they feel works out best for them.

### **B. Definition of “interference”**

18. While Congress stated in Section 2(b)(2)(A) of the LCRA, that the FCC can take measures to waive second-adjacent channel protections providing that “proposed operations will not result in interference to any authorized radio service”, Congress did not define “interference” thus delegating the Commission to decide what exactly is considered acceptable interference under the LCRA. The REC SuperCoordinator 2012 simulations of potential LPFM application activity have shown that in urban areas, approximately 87% of all new construction permit

applications will require a second-adjacent waiver. Without a reasonable waiver process, only Dallas, Houston and Atlanta in the Top-10 markets will ever have LPFM in their future.

19. *de-minimus population inside an overlap zone could be considered as “acceptable”*. The Commission has recognized that when an LPFM station is operating inside the service contour of a full power FM station on a second adjacent channel, the only predicted interference occurs in “[A] small area in the immediate vicinity of the LPFM station transmitter site” and further states (in cases of second adjacent channel encroachment), “[T]he public interest may favor continued LPFM second- [and third-] adjacent channel operations over a subsequently authorized upgrade or new full service station.”<sup>20</sup> REC feels that a similar public interest argument can be made for a new local voice that serves a very small area in contrast to the full-service station. The Commission has long recognized that:

Overlap of a co-channel or first-adjacent channel signals is a more serious matter since the interference that may occur results in the loss of service over a wide area. Second [or third] adjacent overlap may result in the replacement of one signal by another (not the complete loss of service) and is confined to a very small area around the transmitter of the interfering station. In addition, the potential for such interference to occur depends to a great extent on the quality of the receivers used within the affected area<sup>21</sup>.

In *Educational Information Corporation*, the station filing for a waiver stated that their application would be in the public interest because of various reasons including the fact that the

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<sup>20</sup> - See *Creation of a Low Power Radio Service – Further Notice of Proposed Rulemaking*. 20 FCC Rcd 6780-81 at 38.

<sup>21</sup> - See *Educational Information Corporation*. 6 FCC Rcd 2207 (1991) at 9.

population and area of the second-adjacent channel overlap is less than one percent of the other station's [proposed] 1 mV/m coverage contour<sup>22</sup>. 11 years later, the Commission's decision in *Living Way* would clarify that for FM translators must have zero-"listeners and potential listeners" within the overlap area<sup>23</sup>. With two policies that appear *prima facie* to conflict each other, there are some differences and commonalities between the types of stations involved in each waiver. In *Education Information Corporation*, it involved a NCE-FM station operating in the reserved band while *Living Way* involved a translator, also operating in the reserved band (but adjacent to the non-reserved band).

20. *LPFM stations are more like NCE-FM stations than FM translators.* NCE-FM stations can originate their own programming, so can LPFM. The stations involved in *Education Information Corporation* are non-commercial educational (NCE), so are LPFM stations. NCE and LPFM stations are both governed from Part 73 of the Commission's rules while FM translators are governed from Part 74. Where the significant difference between *Education Information Corporation* and *Living Way* exists is that unlike NCE-FM stations, LPFM is a secondary spectrum user like FM translators. However, we argue that because the Commission has already recognized the public interest value of maintaining an LPFM radio voice on the air through the current second-adjacent waiver process and that LPFM stations, while secondary actually originate local programming, unlike their translator counterparts, we feel that the public interest dictates that policy should lean more towards *Educational Information Corporation* when reviewing second adjacent channel waivers. For digital television, the Commission uses a

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<sup>22</sup> - *id* at 13.

<sup>23</sup> - See *Living Way Ministries*. 17 FCC Rcd 17054 (2002) at 11.

standard in allotments proceedings that facilities cannot propose more than 2% of the population of another station's service contour receiving overlap<sup>24</sup>.

21. *The Commission can define "interference" specific for second adjacent channel waivers.* Because the LCRA specifically does not define interference, we feel that there should be some consideration for *de minimus* population overlaps, especially in sparse rural areas. While options should be available to allow LPFM applicants to use directional antennas, differing polarization and reduced power, there must be allowances to permit extremely minimal population. This would mean that in the overlap area: (1) there are no more than 100 persons including residential population and employee population at commercial locations<sup>25</sup> and (2) the overlap area does not include a signed state, U.S. or Interstate highway with a minimum of two traffic lanes in each direction. Because these secondary LPFM stations would be subject to interference mitigation processes under Section 7 of the LCRA, we feel that this definition allows the ability for new services to start while addressing bona-fide interference issues if they should ever arise.

22. *Existing LPFM stations.* REC is concerned about the welfare of existing LPFM stations currently operating under Special Temporary Authority (STA) to operate on second adjacent channels in the event that the Commission makes an interpretation of the definition of interference that varies from the policies used to authorize these stations on their current

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<sup>24</sup> - 47 C. F. R. §73.623(c)(2)

<sup>25</sup> - Employees of the station or its parent organization as well as their families that may either work in commercial buildings or reside in homes within the overlap area of the LPFM station would not be counted.



channels. We want to assure that any definition of interference will not jeopardize the continued operation of these stations and to assure that either their STAs will be renewed or they are granted licenses specifying their current facilities.

**C. Methods of showing non-interference**

23. REC supports the use of all possible methods to protect a second-adjacent full service station in order to provide a local LPFM service on a second adjacent channel including the use of directional antennas and reduced power in order to reduce the overlap area<sup>26</sup> and the use of reports to demonstrate compliance with second adjacent waiver policies<sup>27</sup>. But we need to point out, that translators who have applied *Living Way* have been able to do it on mountaintop locations where even if interference was to reach the ground, there is no population. LPFM, being more likely to be located at ground level will need the ability to make other showings including *de minimus*-population (less than 100 persons) as we have mentioned.

**IV. INTERFERENCE MITIGATION**

24. “*Bona-fide*” complaints. A bona-fide complaint is difficult to define and therefore to enforce due to a lack of receiver standards. A receiver with poor signal rejection such as a drug store “Coby” model is far more likely to have problems when compared with other models.

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<sup>26</sup> - NPRM at 18.

<sup>27</sup> - See *Living Way Ministries, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 17054, 17056 (2002) at 5.

No radio service should be “dumbed down” to the cheapest equipment. Instead, the equipment should be expected to meet a certain standard. The Commission needs to develop a standard for equipment that there would be a threshold where interference is bona-fide and not due to a listener’s defective or inferior radio or antenna.

25. *Complaint process.* Section 7(3) complaints by disinterested parties<sup>28</sup> should be channeled through the FCC Call Center and other complaints processes within the Audio Division. It is very likely that the listener may not know the call sign of the allegedly interfering LPFM station but should be able to identify the call sign of the affected station. At the same time, we hope that Commission call center staff work with the listener to assure that they have a receiver and antenna arrangement that meets some basic standards. We will stand on the fact that interference can be just as much, if not more, caused by the receiver (or other household devices) as it would be caused by the LPFM station. REC opposes the burden on LPFM licensees by frivolous and anonymous complaints.

#### **IV. CLASSES OF SERVICE**

##### **A. LP-10**

26. The Commission is considering elimination of the LP10 service citing that no LP10 stations have been licensed<sup>29</sup>. REC’s position on the LP10 service is that in most

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<sup>28</sup> - FNPRM at 31.

<sup>29</sup> - FNPRM at 48.

situations, it is spectrally inefficient when there are other options available. We will offer such an option.

27. *The elimination of a sub-100 watt service will greatly impact urban LPFM availability.* REC is concerned that the elimination of LP10 and otherwise the lack of a LPFM service under 100-watts will go completely against the Commission's goal of increased localism, delivering diverse services to economically depressed areas and in some ways, goes right in the face of the LCRA. The REC SuperCoordinator 2012 study goes to a point in every US Census Bureau ZIP Code Tabulation Area (ZCTA) in descending population order and attempts to assign an LPFM channel there taking into consideration all existing stations<sup>30</sup> and other hypothetical LPFM facilities assigned by the program. This shows the potential for channel loading in the urban areas. Two of our study scenarios included placing only LP100 stations across the country and also a mix of LP100 and LP10 stations<sup>31</sup>. We have found that in the spectrum limited markets, removing LP10 would reduce the opportunities for LPFM in half thus resulting in fewer voices. The following chart shows how removing LP10 (or any sub-100 watt service) will impact the diversity of voices in the top-11 markets:

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<sup>30</sup> - SuperCoordinator 2012, like most REC search tools uses an REC developed database that evaluated each market to predict the LPFM protected channel/points and then based on that information, predicted which translators at their current location, power and channel would not protect predicted LPFM channel/point opportunities within the metropolitan grids. Once the FCC releases more information on the channel/point combinations, we will release and re-run our data.

<sup>31</sup> - SuperCoordinator 2012 would first look for an available LP100 channel at a location and if available would assign that in the preferential order of fully spaced, receives interference or requires waiver. If no LP100 channels are available, an LP10 channel is assigned in the same order. If no channels are available, the program skips the ZCTA and moves on.

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Rank	Market (inside the 30x30 grid)	LP100 Only	LP10 and LP100		
			LP100	LP10	Total
1	New York NY	3	2	8	10
2	Los Angeles CA	11	4	34	38
3	Chicago IL	8	6	17	23
4	San Francisco CA	11	8	30	38
5	Dallas-Fort Worth TX	15	11	21	32
6	Houston-Galveston TX	38	34	36	70
7	Philadelphia PA	11	8	22	30
8	Washington DC	8	4	23	27
9	Atlanta GA	18	15	25	40
10	Boston MA	7	5	22	27
11	Detroit MI	1	0	7	7

### **B. Making the LP10 service more viable**

28. REC originally supported the LP10 service as a “microradio” service for specific urban neighborhoods and other places where LP100 would be not practical or not possible<sup>32</sup>. With Congress passing the Radio Broadcast Protection Act<sup>33</sup>, most urban opportunities were eliminated. In 2012, the playing field has changed. With the changes in engineering rules and policies around second adjacent waivers, it is more possible for a sub-100 watt service such as LP10 to be a viable solution. However at the same time, we agree that LP10 may be spectrally inefficient in many areas. With that, REC feels that a different solution for urban core areas and even smaller suburban or rural areas is in order.

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<sup>32</sup> - See *Creation of a Low Power Radio Service, Comments of REC Networks*. MM Docket 99-25 (2/6/1999) at 19.

<sup>33</sup> - *Making Appropriations for the Government of the District of Columbia for FY 2001 Act* (“2001 D.C. Appropriations Act”) Pub L. No. 106-553 §632, 114 Stat. 2762, 2762-A-111 (2000).

29. REC supports increasing the output power of the LP10 service to 50 watts (“LP50”). LP50 would operate at a maximum of 0.05kW at 30 m height above average terrain (HAAT). LP50 stations would operate with a maximum service contour of 4.709 km (in comparison, LP10 had a service contour of 3.152 km). Like LP10 stations, LP50 stations would be permitted to operate a minimum of one watt.

30. *The reasons for choosing 50 watts.* REC has evaluated various concepts for a replacement for LP10 including a “flexible” power service where power could vary between 10 and 99 watts as well as fixed service contour classes. REC decided on the 50-watt service class as it would be one simple model that would be the easiest for the Commission to administrate. We feel that the 50 watt limit was just the right amount of maximization that LP10 applicants would need to assure that more local residents would have a more solid signal. At 3.152 km, the service contour for LP10, an LP50 station would be able to provide a field strength of 66.924 km. This additional field strength will improve indoor listening when compared to an LP10 facility at the same distance. We also chose 50 watts because it is the maximum power authorized to stations located within 125km of the common border with Mexico<sup>34</sup> and would be a good choice for stations operating at ground level<sup>35</sup>. 50 watts is also the minimum output power of a LP100 station<sup>36</sup> therefore, we now have a power option all the way from one watt to 250 watts.

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<sup>34</sup> - See *Agreement Between the Governments of the United States of America and the Government of the United Mexican States Relating to the FM Broadcasting Service in the Band 88-108 MHz*, Annex 1 at 2.1.2. Also, REC does support the ability for LP100 and LP250 stations near an international boundary to be able to use directional antennas to limit radiation into the foreign country per existing agreements while still meeting domestic minimum spacing requirements of §73.807, especially those mandated through the LCRA.

<sup>35</sup> - We are not proposing to restrict the area within 125km to the Mexican border to LP50 only. Locations that are above 30m HAAT should be able to apply for LP100 or LP250 stations and

31. *LP50 does not undermine the LCRA.* The REC proposed LP50 service is designed similar to how the Commission designed LP250. For co-channel and first-adjacent domestic full-service separations, we will use the same distance separations currently codified for the existing LP10 service. This will maintain a “buffer-zone” between the interference contour of the LP50 station and the service contour of the full service station. This buffer-zone is between 11.8 and 18.6 km for co-channel and between 16.7 and 17.7 km for first adjacent channels. Because LP50 uses the same distance separation requirements for co-channel and first-adjacent domestic full-service distance separations as the already codified LP10 service<sup>37</sup>, the implementation of LP50, like the Commission’s proposed implementation of LP250 would not undermine Section (3)(b)(1) of the LCRA. Like with the LP250 service, the distance separations between the proposed LP50 station and other stations on second-adjacent channels, channel 6 TV stations and foreign facilities would be adjusted to reflect the increased service contour of the LP50. Proposed distance separation tables are in Appendix A.

32. *LP50 should not be “sub-secondary” like LP10.* When the Commission created the LPFM service, they stated that the “relatively smaller service areas of LP10 stations<sup>38</sup>” and really offers no explanation of why FM translators were not required to protect LP10 stations.

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have their ERP limited to 50 watts or lower. A LP100 station can operate at a HAAT up to 46m at 50 watts while LP250 stations can operate up to 69m HAAT at 50 watts.

<sup>36</sup> - 47 C. F. R. §73.811(a)(2).

<sup>37</sup> - 47 C. F. R. §73.807(b)(1).

<sup>38</sup> - *Creation of a Low Power Radio Service*. Report and Order – 14 FCC Rcd. 2471, 2488-89 (1999) (“Original R&O”) at 63.

The REC SuperCoordinator 2012 study has shown that many potentially new LP50 stations, especially those placed in urban areas can achieve populations exceeding 900,000 persons<sup>39</sup> and a considerable number of sites that exceed 250,000. When compared with the service areas of many current LP100 stations, this is not necessarily a “smaller service area”. Because of the increase in service contour size and the potential for an audience of nearly 1 million, we feel that in order to assure a level of viability in the LP50 service, that the service remain secondary in respect to primary users (full-service FM) but co-secondary in respect to LP100, LP250, FM translators and FM boosters. We propose that LP100, LP250, FM translators and FM booster stations be required to protect LP50 in the same manner that LP100 stations are protected today.

33. *LP50 will reach more areas than LP100.* In some major markets, including New York, Nassau/Suffolk, Detroit and Riverside/San Bernardino, LP50 or LP10 are the only solutions. The following chart indicates the percentage of the Nation’s population that has access to each class of LPFM station<sup>40</sup>:

LP10	LP50	LP100
94.3%	93.4%	87.2%

While fewer LP50 stations can be placed in a large urban area than LP10 stations, the LP50 stations will be a better quality facility with a larger population reach and will get closer to the

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<sup>39</sup> - A hypothetical LP50 station set up in ZCTA 11385 (Ridgewood, NY) has a predicted 60dBu F(50,50) service contour population of 935,280 persons (2010 Census). In contrast, a LP10 station at the same location would have a predicted service contour population of 365,409 persons.

<sup>40</sup> - 2000 Census Block Group populations of locations where a LPFM station can be placed, even if a second adjacent waiver may be required.

city cores than LP100 or LP250. We performed three REC SuperCoordinator2012 studies involving the placement of LP50 facilities. Like the LP100 and LP10 reports, these SuperCoordinator reports attempted to place the best possible channel in each ZCTA in descending population order<sup>41</sup>. A summary of these results can be found in Appendix B. A full report can be retrieved using REC's SuperView report site<sup>42</sup>.

**D. LP-250**

**i. Establishment of a new 250-watt service**

34. REC supports the establishment of a 250-watt LPFM service (LP250) in general. However, we do not support the creation of this service at the expense of losing a sub-100 watt LPFM service. REC supports LP250, especially in rural areas but it was never with the prospect that LP10 would be lost. REC's overall preference is to have LP100 and LP50 stations available nationwide and LP250 stations available outside of urban areas without restrictions and within

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<sup>41</sup> - The LP50 SuperCoordinator 2012 report program also contained a rule that if the location was within 125km of the Mexican border, no facility greater than LP50 would be assigned in that ZCTA. A significant majority of the populated areas within the Mexico border strip zone are at HAATs of 30m or less.

<sup>42</sup> <http://cdbs.recnet.net:8080/superview.php> - When using SuperView, use Report # 2 BEST AVAL (250/100/50) THEN (FULL/AVIL/WAVR), MEX STRIP 50 ONLY, NO 250 IN METRO CORE to see SuperCoordinator results reflecting REC's proposal and Report #4 LP-100 ONLY THEN (FULL/AVIL/WAVR), MEX STRIP LP-100 ONLY to view the Commission's current proposal to only license new LP100 stations. SuperCoordinator 2012 overviews of every spectrum available and spectrum limited market using both reports #2 and #4 can also be found in Appendix F. A master assignments list showing all hypothetical LPFM facilities assigned by SuperCoordinator 2012 using Report #2 can be found in Appendix G.



urban areas after it has been shown that there is limited demand for LP50 and LP100 stations within the core urban areas.

35. *LP250 for new stations.* REC does not agree with the Commission that LP250 should be limited to stations that can “[demonstrate] their ability to construct and operated a limited opportunity to expand their listenership.”<sup>43</sup> Instead, we feel that LP250 should be made to all new applicants as well as existing LP100 stations where spectrum is available including within the core areas where the spectrum has been demonstrated as not needed by LP50 applicants.

36. *LP250 for existing LP100 stations.* We feel that LP100 stations that wish to upgrade to LP250 should be able to do it as a minor change as long as the power upgrade can be done on the co-channel, first adjacent channel or IF channels. This is consistent with the Commission’s “one-step” process in place for commercial FM stations<sup>44</sup>. In a study<sup>45</sup> conducted in late March 2012, REC has found that 187 current LP100 stations can upgrade on their own channel (177 if the Commission keeps the proposed geographic restrictions in place) and 61 more stations (57 with geographic restrictions) can possibly upgrade on the same channel if permitted to use a second adjacent channel waiver. The study also shows more stations that can

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<sup>43</sup> - FNPRM at 51.

<sup>44</sup> - See *Amendment of the Commission’s Rules to Permit FM Channel and Class Modifications by Application*, Report and Order. 8 FCC Rcd 4740 at 20.

<sup>45</sup> - See *REC Potential LP-250 Upgrade List*. (2012). Available at <http://home.recnet.com/lp250-upgrade-list>

upgrade but will require a channel change to an adjacent or IF channel<sup>46</sup>. We feel that the ability for LP100 stations to upgrade to LP250 should be implemented prior to the application freeze and filing window for new construction permits as to permit those stations with a desire to upgrade to have their applications in place before new LPFM applications come in.

37. *LP250's impacts on the LCRA.* The manner that the Commission has designed the LP250 is done in a way that complies with the statute of the LCRA. While the LCRA requires that the Commission not reduce distance spacing requirements already codified<sup>47</sup>, it does not specify power levels or service contour sizes thus giving the Commission the authority to create a new LPFM service that does not have distance separation shorter than one of the existing codified services (LP10 or LP100). In our proposal for the LP50 service, we used methodology similar to LP250 relying on the Commission's assumption that creating these new services would not violate the statute<sup>48</sup>.

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<sup>46</sup> - The study assumed that the station would upgrade at their current transmitter site and did not take moving the transmitter site into consideration. REC would also support a site move with an upgrade, consistent with current Commission policy to be done as a minor change.

<sup>47</sup> - LCRA, §3(a)

<sup>48</sup> - NFPRM at 51.

ii. Placement of LP250 stations

38. Through the REC ENAC and REC SuperCoordinator 2012 studies, we have performed extensive studies on the availability of new LP250 in all areas. In SuperCoordinator 2012, we looked at three regulatory scenarios for assigning hypothetical LP250 facilities:

- LP50, LP100 and LP250 with no geographical restrictions. (Report 1)
- LP50, LP100 and LP250 with the FCC's proposed restriction on LP250 stations within 30km of markets 1-20, 20km of spectrum limited markets 21-50 and 10km of spectrum limited markets 51-100 ("Core metropolitan areas"). (Report 2)
- LP50 and LP250 with the FCC's proposed restrictions on LP250 stations within 30km of markets 1-20, 20km of spectrum limited markets 21-50 and 10km of spectrum limited markets 51-100<sup>49</sup>. (Report 3)

39. *Complete market restriction of LP250.* One proposal the Commission is suggesting is that LP250 stations are completely restricted in markets 1-50<sup>50</sup>. REC positively objects to this approach as it assumes that the entire area within the Arbitron market boundaries of markets 1 through 50 are all dense urban or suburban. In market 2 (Los Angeles), which includes Los Angeles and Orange County, there is extensive rural and agricultural areas within the Antelope Valley of northern Los Angeles County. This area of farms and one-acre lots is within the Los Angeles metro market even though the area receives limited reception of Los

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<sup>49</sup> - In all three studies, we limited assignment within 125km of the Mexican border to only LP50 stations.

<sup>50</sup> - FNPRM at 51.

Angeles area radio stations. Another example is Maricopa County in Phoenix. In the outskirts of the county including Buckeye and Wickenburg, these areas are very rural and the placement of LP250 stations in these areas will have no impact on the Phoenix core metro area. There are many other examples nationwide but overall, we do not support excluding LP250 from an entire market.

40. *The use of radii to define core metropolitan areas.* We feel that the use of radii around the city center of an Arbitron metro market<sup>51</sup> is a much more sensible approach to defining a core metropolitan area than excluding an entire market. REC feels that the 30km radius for markets 1 through 20 and the 20km radius for 21 through 50 are sufficient but we do have concerns about a 10 km radius around markets 51 through 100. The intention of the radii is to protect urban opportunities within the core of the market. A LP250 station has an interference contour of 23.8 km on co-channel. If a LP250 is placed within 10km of the boundary of a core metropolitan zone for markets 51 through 100, the required spacing would significantly prevent any use of the channel in the area the zone was intended to protect. REC questions if such a protection area is even needed for markets 51 through 100 especially considering that only 21 of those markets are spectrum limited. If the Commission wishes to keep these 21 markets protected, we would support an increase of the core metropolitan zone from 10km to 20km in an effort to achieve the intention of this proposed rule however we support placing restrictions only inside markets 1 through 50.

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<sup>51</sup> - *id.*

41. *LP250 service within the core metropolitan areas.* REC feels that LP250 should be available in all areas, including within the core metropolitan areas however our support in core metropolitan areas is limited to areas where it is evident that the spectrum is not needed for lower power (LP50 and LP100) stations. REC proposes that during the filing window, all applicants within the core metropolitan area must apply for LP50 or LP100 stations. Once the window closes and the pending applications are disclosed, a pending LP50 and LP100 applicant may amend their application to specify LP250 if the following conditions are met:

- The LP50 and LP100 applicant within the restricted zone is separated at least 31 km from all other LPFM applicants on the same channel.
- The LP50 and LP100 applicant within the restricted zone is separated at least 17 km from all other LPFM applicants on first adjacent channels.
- The LP50 and LP100 applicant within the restricted zone is properly spaced to full-service, FM translator, TV Channel 6 and foreign facilities at the LP250 distance separation requirements.
- Prior to a construction permit being granted, the applicant may not move the location of the station in order to take the higher class of service as it may create a new mutual exclusivity situation.
- During the application process only, if an LPFM applicant outside the core metropolitan area wishes to amend their application, they will be required to protect LP50 and LP100 stations within the restricted zone that have not yet amended their applications as if they are LP250 stations. The LPFM outside the restricted zone can amend their application but not to a location where it would prevent LP50 and LP100 stations within the zone from

being able to upgrade. Upon construction permit grant, these protections are no longer in effect and regular LPFM protections apply.

If LP50 and LP100 applications within the core metropolitan area are mutually exclusive with other applications within or outside the core metropolitan area, they will stay at the power on their original application. The applicant should be allowed to amend their application to reduce power in order to resolve the mutual exclusivity. If upon initial application during the filing window, an applicant outside the core metropolitan area is properly spaced to a LP50 within the core metropolitan area but would otherwise be short spaced if that facility was a LP250, this would not be considered mutually exclusive. Instead, the LP50 within the core metropolitan area would not be able to amend their application for a higher power.

**E. Intermediate Frequency (I.F.) protection**

42. REC supports the elimination of protections of intermediate frequency (“I.F.”) by LPFM stations<sup>52</sup> with one recommended change. The current I.F. rule for FM Translators<sup>53</sup> is written to consider stations under 100 watts to be “class D stations” and therefore waiving the IF requirement. We feel that for the purposes of I.F. protection only, that a station that operates exactly 100 watts be considered as a class-D station and therefore not subject to IF protection. This should apply to both FM Translators as well as LPFM stations and we also recommend a change in Part 74 to reflect this change. If this must remain with the “less than 100” watt

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<sup>52</sup> - FNPRM at 52.

<sup>53</sup> - 47 C. F. R. §74.1204(g)

language, then LP100 stations that do not meet the I.F. distance separation<sup>54</sup> would be authorized at 99 watts.

## **V. LPFM STATION OWNERSHIP**

### **A. Native Nations**

43. Formerly being based out of Arizona and specifically, the Phoenix metropolitan area, REC has had some experience with Native Nations, especially what we refer to as “urban tribes”, those such as the Salt River-Pima-Maricopa Indian Community that are bounded by or are significantly close to a densely populated urbanized area. While we understand that there are Native Nations who have been deprived of full power commercial allotments especially in this era of auctions, we do question whether this serious need exists at the LPFM level at the level that it exists for full-service radio. However, we do feel that Native Nations should be afforded equal opportunities to obtain LPFM stations and even additional opportunities within their sovereign lands as long as these additional opportunities do not impact the availability of LPFM services off-tribal lands, especially in the case of urban tribes.

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<sup>54</sup> - LP250 stations operating at HAAT above 49m would be required to operate less than 100 watts and therefore also not subject to I.F. protection requirements.

**i. Cross-ownership**

44. The Commission is proposing that Native Nations that currently have an attributable interest in a full power broadcast facility should be able to hold LPFM authorizations<sup>55</sup>. We could see the reasons why a Native Nation may need an LPFM station in addition to a full-service station (especially if the full-power station is a commercial tribal enterprise). We do feel that such opportunities must not significantly preclude opportunities outside of tribal land. REC feels that for cross-ownership (and for multiple-ownership), the proposed LPFM station(s) must have a 60 dBu contour where at least 50% of the land area is on tribal land (including land of other tribes). This is consistent with existing Commission policy for Tribal Priority<sup>56</sup>.

45. *Should cross-ownership be limited to underserved areas?* REC sees the cross-ownership of LPFM stations by Native Nations for tribal schools, local language broadcasting and emergency public-safety information where the cross-owned full power station provides a general entertainment and information service to a wide area, both inside and outside of tribal lands<sup>57</sup>. We feel our proposed 50% tribal land coverage criteria would be the best fit that would provide Native Nations with the service that they need within their own land while limiting the preclusion of new LPFM services outside the Native Nations and be the most consistent with

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<sup>55</sup> - FNPRM at 57.

<sup>56</sup> - See *Policies to Promote Rural Radio Service and Streamline Assignment Procedures*, First Report and Order, 25 FCC Rcd 1584, 1584 (2010) at 5.

<sup>57</sup> - *id* at footnote 15. “Tribal lands” is defined.



existing Commission policies<sup>58</sup>. We do not feel that “first” or “second” service priorities<sup>59</sup> should be applicable as LPFM is not subject to FM assignment policies<sup>60</sup> and LPFM stations are not obligated to provide service to a particular community of license.

46. While we support Native Nations obtaining LPFM as their first broadcast interest especially if it is the only service available, we feel that this ability for cross-ownership is a special exemption that is not afforded to other minority groups but at the same time, we also acknowledge the sovereignty of the Native Nations within the confines of tribal land but at the same time, we must balance such recognition with our goal of providing LPFM to community groups in urbanized areas.

**ii. Multiple LPFM station ownership**

47. Tribal governments are Part 90 eligible<sup>61</sup>, therefore they are already eligible for multiple ownership under LPFM’s public safety provisions<sup>62</sup>. During the first LPFM windows,

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<sup>58</sup> - See Appendix H for a survey of selected American Indian Reservations and Off-Reservation Trustlands and their ability to meet these requirements for the three proposed LPFM classes of service.

<sup>59</sup> - *id* at 5.

<sup>60</sup> - See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC2d 88, 91-93 (1982).

<sup>61</sup> - 47 C. F. R. §90.20(a)

<sup>62</sup> - 47 C. F. R. §73.855(b)

we did see Native Nations file for multiple LPFM stations under the public safety rules<sup>63</sup>. We acknowledge that some tribal LPFM stations may be used instead for an educational purpose. We feel that multiple LPFM stations for educational purposes within tribal lands may serve the interest of Native Nations (such as individual schools) and we feel that for tribes that do not already have attributable broadcast interests should be subject to our proposed 50% tribal land criteria for each additional LPFM station.

**B. LPFM/FM Translator cross-ownership**

48. REC will support the limited cross-ownership of translators by LPFM licensees<sup>64</sup>. We feel that in cases where an LPFM station's service area has an unusual geography, the use of a translator may be able to extend the coverage just far enough to cover the intended community such as a specific county. We see FM Translators as a way to maximize an LPFM station's coverage without substantial expansion.

49. *How "local" should LPFM be?* While LPFM stations have been legally broadcasted on the translators of other entities for about a decade now, we remain concerned about how big a *low power* FM radio station should be able to grow. What is to stop an LPFM licensee from building a large network of translators fed from a single LPFM station? This could

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<sup>63</sup> - See applications for *Confederated Salish & Kootenai Tribes Disaster & Emergency Services* ("Salish") application BNPL-20010615AXE, et al. Currently, Salish is the licensee of 5 LPFM stations in Montana.

<sup>64</sup> - FNPRM at 56.

result in future speculative filing for both LPFM stations and FM Translators<sup>65</sup>. REC feels that LPFM is a local service, therefore, we can only support translators that will result in enhancing the localism of the station while weighing in the unique needs for some LPFM licensees to reach as much of their local audience as possible.

50. *Translator's primary station.* LPFM cross-owned translators must be for the LPFM in order to obtain extended coverage in the local area to overcome terrain or just distance in a slightly spread out community. The LPFM cross-owned station must synchronously carry the LPFM's analog main channel as its primary station<sup>66</sup>.

51. *Coverage areas.* Because we believe that a LPFM owned translator should be used for fulfilling physical or social geographic nuances of the community being served, we feel that any translator's service contour have some form of overlap with the primary LPFM station's service contour<sup>67</sup>. Also, we feel that translators cross-owned by LPFM stations should not be superior in coverage than LPFM stations overall. For this reason, we feel that translators owned by LPFM licensees should be limited 250 watts at 32 meters HAAT. For consistency, the Commission could apply the table in §74.1235(b)(1) to apply to LPFM cross-owned translators on a nationwide basis<sup>68</sup>.

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<sup>65</sup> - FNPRM at 1 addressing "licensing abuses".

<sup>66</sup> - FNPRM at 56.

<sup>67</sup> - *id.*

<sup>68</sup> - Normally, §74.1235(b)(1) applies only to translators located east of the Mississippi River or in Zone I-A as described in §73.205(b).

52. *Alternate forms of transmission.* Because we are proposing that an LPFM cross-owned translator must have service contour overlap with the primary station as well as restrictions on primary station carriage, we understand that some circumstances would still not allow the translator to receive the primary LPFM station, we feel that in this case only, alternate forms of transmission including within the non-reserved band should be permitted for microwave, internet and wireline (but not satellite) delivery. Several years ago, REC opposed RM-10609, a petition to allow non-reserved band translators to be fed through alternate forms<sup>69</sup>. In this case, because of the circumstances, we feel that allowing these alternate transmission methods for LPFM cross-owned translators would not undermine the prohibition of such methods of signal delivery in the non-reserved band.

**C. Student operated LPFM stations**

53. In the NPRM, the Commission solicited other ideas for the selection process<sup>70</sup>. REC feels that we need to touch on an issue that needs to be addressed as it covers both the selection process and cross-ownership rules. REC feels that this is the right time to eliminate the current “student station” policy, specially §73.860(b)(4) of the rules that allows cross-ownership of a LPFM station by a university that has an attributable interest in a full-service broadcast station if the LPFM station is managed and operated by the students and is not subject to

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<sup>69</sup> - See *Amendment of Part 74 of the Commission’s Rules to Permit Satellite Feeds to Noncommercial Educational FM Translators Operating on Commercial Frequencies*. Comments of REC Networks. RM-10609 (12/4/2002).

<sup>70</sup> - FNPRM at 64.

competing applications. Under current policy, student stations are the first to be dismissed if there are competing applications. We saw this happen at the University of Arizona<sup>71</sup>.

54. Because of the ongoing trend of full-power NCE stations being sold similar to what happened at KUSF in San Francisco or cases where the university decides that the station would be more viable if the student programming is removed from the station, we feel that it is time for universities to be permitted to provide a LPFM station that is more reliable than their current Part 15 carrier current systems. With that, we propose that the “student station” competing application restriction be removed as to allow such stations to be permitted to participate in settlement and time share agreements like other members of the community. We see this type of ownership situation more relevant now considering that the Commission is proposing to grant Native Nations the ability to not just do cross-ownership, but also to allow multiple ownership, without regard to competing applications.

55. Even though we propose to remove the provision regarding competing applications, we still feel that the rest of §73.860(b) would apply thus assuring that students and not paid staff and the university’s board of directors are responsible for the day to day operations at the cross-owned LPFM station.

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<sup>71</sup> - See application for *KAMP Student Radio*, BNPL-20010613ADH.

## VI. SELECTION

### A. Consortia

56. REC is deeply concerned about the formation of consortia because of the potential for speculation and allegedly fraudulent applications as a result of “point stacking” or aggregation of points<sup>72</sup>. REC feels that if the Commission wishes to accept a consortium organized of multiple organizations for the purpose of running an LPFM station, they should do so using the organization with the longest community presence as the organization’s establishment date for the purposes of tie breaking however we do not feel that additional points should be awarded to such arrangements. REC is proposing a 10-point plan that includes a tie-breaker process and a mandatory time-share process to handle MX situations that can’t be settled voluntarily. We feel that this process as well as the larger channel availability in this window, the MX situations may be fewer and simpler.

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<sup>72</sup> - See REC LPFM “MX” Settlement Plan for Windows I, II and III (2003) available at <http://recnet.com/window2000/mxwin123.pdf>. In FCC Group #28, we mentioned that two applications, *Friends of Traditional Dance* (now known as Fireside Educational Group), BNPL-20010122AIV (granted) and *Public Radio for the Front Range*, BNPL-20010122AIW (dismissed) had common parties to the applications. See also in the same REC document, FCC Group #52, three applications, *Harbor Country Lodging Association*, BNPL-20000830AAZ (dismissed), *Harbor Country Chamber of Commerce*, BNPL-20000830ABD (dismissed) and *River Valley School District*, BNPL-20000831AAS (dismissed). REC identified all of these applications as “controversial” as they were filed by the same person. These two examples support our feelings that the use of “point stacking” (which was used in the previous windows) and consortia will encourage potentially speculative behavior which will only create unnecessary applications and will result in the delay of processing for many applicants. While REC did does confirm any allegations of “point stacking” in any MX group, we did see a trend of suspicious applications.

57. *Point aggregation and consortia can encourage discrimination.* In addition to “point stacking”, another potential downfall of point aggregation and consortium agreements is that it can unfairly discriminate against another applicant over race, national origin, religion, political affiliation, sexual orientation, gender identity or any other minority class or belief. Let’s use an example. An MX group consists of two organizations that think with “A” political views and one group that thinks by “B” political views, all equally qualified by points. The two “A” organizations can either form a consortium or reach an aggregation settlement to “gang-up” on the remaining applicant because the consortium does not agree with the other organization’s politics. We would rather see a situation where the consortium would be given the channel for 12 hours a day and the other organization gets it for the other 12, but of course, it would be in the best interest for the two “A” organizations to apply separately, each getting an 8-hour piece of the day and the remaining organization still gets 8-hours. The Commission asks if the proposal will lead to organizations interested in constructing and operating an LPFM station to recruit other organizations that have no interest in doing so to participate in a consortium in order to inflate the consortium’s point total<sup>73</sup>. We say, absolutely. It happened in the past window and with many more urban opportunities open in this window, we think that it will happen much more. We feel that the handling of LPFM stations should be handled differently from NCE stations. Unlike NCE stations, LPFM stations are more “within reach” for various organizations with more limited budgets and this includes minority groups not traditionally represented on full-power NCE radio. We feel that these smaller organizations that may represent minority groups that do not meet the “approval” of larger groups. We feel that consortia and especially point aggregation can be used intentionally to silence voices that these organizations do not agree with.

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<sup>73</sup> - FNPRM at 62.

This is pack mentality, not diversity. With that, we ask that the Commission only process full settlements and anything short of a full settlement should be referred to our proposed involuntary time share process. This way, everyone has a fair chance.

**B. Point system**

58. *More points mean fewer ties and a faster turnaround time.* REC has developed a 10-point system that will encourage community ownership, community involvement, community access and community training as well as address the needs of children. It also awards points on pledges by the station to perform some tasks that promote localism but are currently only required by full-service stations. REC feels that applicants who claim certain points must be able to provide evidence of point eligibility and in some cases, the claiming of a point obligates the licensee to meet additional enforceable compliance guidelines that are not normally required of LPFM stations.

**i. Local community presence**

59. The Commission asks if we should increase the number of years required from 2 to 4 years. REC does not find that necessary. For community presence overall, we don't see much of a difference a 4-year old organization would have over a 2-year old organization. Also, under REC's proposal, the age of the organization will come into play in the event of a tie. We do feel though that some metropolitan areas are larger than 10 miles wide and especially for organizations that support those living in the inner-city areas, they may not have board members



or even a headquarters within 10 miles of the transmitter site. Also, with the potential of LP250 stations, there will be more flexibility with transmitter sites including high elevation locations such as mountaintops.

60. REC's proposed local community presence definition awards one point if the organization for the past two years has been headquartered within 20 miles (urban or rural area) of the transmitter site; or for the past two years, the organization has had 75% of its board members residing within 20 miles (urban or rural) of the transmitter site.

### **ii. Local programming**

61. The ability to provide local programming is what separates an LPFM service from a translator. REC considers local programming as program content that has been recorded or performed live from locations within 20 miles of the transmitter site but can also include a music format that contains significant local information including information on community events, local public service announcements, local news and weather information. REC also feels that a viable LPFM station must include programming from a mix of local and non-local sources, especially foreign language stations that carry programming "from home". Therefore, a local programming requirement must mix in the needs of the local community and the resources available to the LPFM station.

62. REC's proposed local programming definition awards one point if the applicant pledges<sup>74</sup> to provide 20 hours per week of local programming originated from a point within 20 miles of the transmitter site if the station is authorized for a 24 hour broadcast day. For stations subject to time sharing, 12% of the licensee's broadcast week<sup>75</sup> must consist of local programming to meet this point.

### **III. Public safety**

63. In addition to being available to organizations with an educational purpose, LPFM is available to those organizations wishing to provide a public safety radio service as a travelers information station (TIS)<sup>76</sup>. During the previous filing window, we experienced a considerable number of applicants who we questioned whether they were actually public safety agencies that

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<sup>74</sup> - We continue to use the word "pledge" instead of a mandatory requirement. This is mainly because we understand that during tough times, a station may not have the resources to generate 20 hours per week of local programming or due to extenuating circumstances such as a natural disaster in another part of the world, the station (especially those operating as time-share) reverts to non-local programming to broadcast information about the distant incident expat listeners to the LPFM station. We don't feel that LPFM stations should be under any threat of enforcement action because they "missed an hour" of local programming the other day. We realize that there others, including some of our closest allies who feel that local programming should be a set-in-stone requirement. We feel that the station's overall performance during their license period should be evaluated and that stations that did not make a significant effort to live up to their local programming pledge point should be accountable during the license renewal process. The concept of mandatory local programming requirements can also raise constitutional concerns. We feel that LPFM applications who pledge local programming should do local programming but we don't feel that it should be an enforceable violation.

<sup>75</sup> - For example: 4 hours a day for a time share station broadcasting 12 hours a day and 2 hours and 40 minutes a day for a time share station broadcasting 8 hours a day.

<sup>76</sup> - 47 C. F. R. §73.853(a)(2).

had actual “jurisdiction” over the area the LPFM would serve<sup>77</sup>. REC feels that an organization that claims to be a public safety agency should be an actual government entity or has been certified by a government entity that they truly have a form of public safety jurisdiction<sup>78</sup>.

64. *Non-government organizations.* These non-government organizations could include search and rescue teams, contract police and fire protection or organizations associated with the Amateur Radio Emergency Service (ARES) or Radio Amateur Civil Emergency Service (RACES) that are working as a part of a statewide or regional disaster plan. In our proposal, if a non-government organization wishes to operate an LPFM station as a public safety emergency service and claim the public safety point, they must attach a letter of endorsement from a city, county or state agency attesting to their participation in the public safety or disaster response plan in the jurisdiction they propose the LPFM station.

65. REC’s proposed public safety definition awards one point if the applicant is a municipal or state agency eligible under Part 90 of the Commission’s rules and provides emergency services in the jurisdiction of the transmitter site and intends to use the station for the transmission of public safety and/or traveler’s information services. Organizations that are not

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<sup>77</sup> - See *REC LPFM “MX” Settlement Plan for Windows I, II and III* (2003) available at <http://recnet.com/window2000/mxwin123.pdf>. In FCC Group #34, we questioned the application of *Hawaiian Public Safety Advocates*, BNPL-20010122ABM (dismissed) of whether they had “jurisdiction” as a public safety agency in Hilo, Hawaii. In addition, many applicants claimed both the “Non-Commercial Educational” (it has existed as an educational institution or organization) and “Public Safety” (it has had *jurisdiction* within the service area of the proposed public safety LPFM station) points including *Warner Avenue Baptist Church*, BNPL-20000605ADT (dismissed), *Burbank Activity Center*, BNPL-2000605AMX (dismissed), *New Life Free Methodist Church*, BNPL20010122AAK (dismissed), et al.

<sup>78</sup> - 47 C.F.R. §90.20(a) describes the eligibility requirements for public safety pool eligible users.

eligible under Part 90 of the Commission's rules who provide an affidavit from a state, county or municipal agency attesting to their participation in public safety activities may also claim this point.

**iv. Radio training programs**

66. When educational radio was created, it was envisioned as not only a method of educating the public at large, it was also seen as a method of training students on the broadcast art in a "real world" situation. While many universities may still have broadcasting programs, they have repurposed their full-service radio stations to compete with other full-service stations in the market and no longer permit students to participate in the programming or operation of the station. Instead, students have been relegated to either carrier current or internet only operations which have minimal regulation. With our proposed deletion of §73.860(b)(4) of the Commission's rules, we wish to encourage broadcast and journalism programs at colleges, universities and even secondary schools to be able to thrive and to encourage the use of LPFM stations as the "real world" training ground by exposing students to a FCC regulated broadcast station.

67. REC proposed radio training program definition allows the applicant to claim this point if they are an accredited K-12 school or a college, university or vocational school that is eligible for Federal Student Financial Aid and the LPFM station will be used for "hands-on" educational experience in broadcasting or related techniques and its day by day operations will be managed and performed by the students of the program.

**v. Children’s radio programming**

68. One underrepresented group in radio programming has been children. In recent history, children’s programming on radio has been limited to commercial “Radio Disney” fare and not much programming that speaks directly to children. Unlike controversies over giving preferential treatment based on race, religion or even sexual orientation and gender identity, there should be no controversy over giving preferential treatment towards our children.

69. We feel that a structure that contains some elements of the Commission’s implementation of the Children’s Television Act (CTA) would be the most appropriate. An LPFM station that would claim this point would be required to broadcast a minimum of 3 hours per week of programming that is “serving the educational and informational needs of children ages 16 and under as a significant purpose”<sup>79</sup> and is aired between the hours of 7AM and 10PM<sup>80</sup>. We propose that LPFM licensees claiming this point be required to maintain information on their children’s programming in their station records. Unlike their television counterparts, no reports would be filed with the Commission. Also unlike television, LPFM stations would not be required to make any announcements that the program that is being aired is considered

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<sup>79</sup> - 47 C. F. R. §73.671(c)(1).

<sup>80</sup> - 47 C. F. R. §73.671(c)(2). In the chance that an 8-hour time share LPFM station is not scheduled to broadcast between the hours of 7AM and 10PM, the station is absolved of all obligations to carry children’s programming during the period of their license where they are not specified to operate between 7AM and 10PM.

“educational and informative”<sup>81</sup> and individual programs are not required to be 30 minutes in length<sup>82</sup>. For example, 5-minute programming segments that air 36 times per week could qualify for meeting the 3 hour requirement. LPFM applicants who do not claim this point will have no obligation to air children’s programming.

70. REC’s proposed children’s radio programming definition allows the applicant to claim a point if they accept an obligation to broadcast for a minimum of 3 hours per week<sup>83</sup>, regularly scheduled programming that serves the educational and informational needs of children ages 16 and under and has a significant purpose. Such programming must be aired between 7AM and 10PM. Applicants must maintain a log of children’s programming aired on the station and kept in their station records, it need not be filed with the FCC.

**vi. Main studio staff presence**

71. Full-service stations have an obligation to serve the public interest within their city of license. The main studio rule requires a licensee to demonstrate that the licensee has a face and is accessible to the general public. Full service stations are expected to keep a meaningful staff presence during normal business hours. When the Commission created LPFM, they recognized that for many organizations, the operation of a radio station was an ancillary

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<sup>81</sup> - 47 C. F. R. §73.671(c)(5).

<sup>82</sup> - 47 C. F. R. §73.671(c)(4).

<sup>83</sup> - 2 hours per week for stations that broadcast 12 hours a day through time sharing and 1 hour a week for stations that broadcast 8 hours a day through time sharing.

portion of their organization's mission and not their primary function and not every LPFM station would have the resources to maintain a full time staff. For many current licensees and prospective LPFM applicants, this is still the case.

72. REC feels though that an organization that maintains a full time staff at a location headquartered within 20 miles of the transmitter is better resourced to fulfill a community service than organizations that cannot maintain a meaningful staff presence during regular business hours. We feel that a minimal application of the main studio rule should apply to LPFM stations that elect to take this point. A 24-hour LPFM station who accepts this point is expected to have station staff available to the public 40 hours a week.

73. REC's proposed main studio staff presence definition allows the applicant to claim a point if they accept an obligation to maintain a staff presence for at least 40 hours per week for LPFM stations operating with 24 hour schedules. For stations operating less than full time, the staff presence must be at least 25% of the hours that a station is authorized to broadcast every week. On days the station is not on the air due to school vacation periods, the staff presence obligation is waived.

**vii. Voluntary public file**

74. Another full-service station obligation that is not required in LPFM is the public file. The public file contains essential information about the station and its obligation to the community of license. Due to the resources and secondary status of LPFM stations, the

Commission had determined that LPFM stations do not have public file obligations. However, we feel that LPFM applicants that have the resources to maintain a limited public file should be recognized for “opening the books” to their station and demonstrating their service to the public as a licensee.

75. *Online public file placement.* We also recognize the Commission’s desire to reduce the public file burden as well as allow broadcasters to place their public file online. REC expects that applicants who claim this point to make their public file available online. This can be done in lieu of maintaining a paper file at a studio. To further reduce the burden on the applicant, many of the items online are actually linked documents at the FCC website.

76. The public inspection file for LPFM under this point would include:

- Authorizations (this can also be satisfied by linking to the documents on the FCC’s CDBS website).
- Applications and related materials (this can also be satisfied by linking to the documents on the FCC’s CDBS website).
- Contour maps.
- Political file.
- “The Public and Broadcasting” (this can also be satisfied by linking to the document at the FCC website).
- Letters and e-mails from the public. (Only e-mails are required to be posted online. Postal letters must be maintained on paper in the office<sup>84</sup>.)

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<sup>84</sup> - 47 C. F. R. §73.3526(e)(4)(iii).



- Material relating to FCC investigations<sup>85</sup>.
- Children’s radio programming logs (if the applicant also claims the children’s radio point).

77. REC’s proposed voluntary public file definition allows an applicant to claim the point if they accept an obligation to maintain an abbreviated public file online or on paper which includes authorizations, applications and related materials, contour maps, political file, “The Public and Broadcasting”, listener letters, material related to FCC investigations and children’s radio programming (if the applicant claims the children’s radio programming point). Items maintained may be either the actual documents or links to those documents at other sources.

**viii. Native Nations**

78. For some Native Nations, especially those we call urban tribes, entry into broadcasting may be impeded due to a lack of full-service spectrum in the area. The Commission has recognized this and has provided “tribal priority” and bidding credits for Native Nations to obtain broadcast licenses. While REC has concerns about allowing multiple ownership and cross-ownership of LPFM stations by Native Nations, we feel that every tribe should have a voice on the air. Unlike our proposed policies for cross-ownership or multiple ownership, we do not propose that a Native Nation’s first station that would claim this point would not be subject to our proposed policy that the station’s service contour must be at least

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<sup>85</sup> - 73 C. F. R. §73.3526(e)(10).

50% within tribal land. There are many things we can learn from our neighbors and for that reason, we propose this point to assist Native Nations to enter into broadcasting.

79. REC's proposed Native Nation point definition allows an applicant to claim the point if they are owned or controlled by a recognized Native Nation that currently has no attributable interests in any other broadcast (AM, TV or TV) broadcast facility and the transmitter site is located within the boundaries of a Native Nation and this is their "first" LPFM station<sup>86</sup>.

**ix. Public access broadcasting**

80. Community-based LPFM stations should be not just a soapbox for a single organization but should be the voice of the people. Community organizations who wish to engage as many members of the public as possible should be recognized for permitting the station for being used in that manner.

81. We feel that this could be done through encouraging a local programming model similar to public access television. Under this model, the station would openly solicit members of the public to develop and submit their own programming to the station for airplay. A station would have the right to reject material if it did not meet Commission rules and guidelines such as obscenity and commercial material as well as material that may otherwise violate other local or

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<sup>86</sup> - We envision that Native Nations who file for multiple LPFM stations who would otherwise qualify for this point would be able to claim this point on one of their applications. Any additional LPFM stations that they may apply for would not be able to take this point.

federal laws including copyright law or if the material does not meet a certain time parameter (too long or too short). We feel that it would be appropriate for the station to require the public access programmer to first attend a “workshop” in order to learn the rules of broadcasting and the overall expectations of the station. The station would be able to make the final decision on why a public access program would not be allowed to air.

82. Unlike some of the other points we have proposed, we will not make this point obligatory to the LPFM station to provide a minimum amount of public access programming per week or to keep logs of programming. We see this as an “enhancement” to the local origination point where the local origination point covers programming created within 20 miles of the transmitter by either a representative of the organization licensee or by any other party where the public access point is for stations that pledge that they will proactively solicit on-air and through other methods members of the public to submit their programming for airplay consideration.

83. REC’s proposed public access broadcasting definition allows an applicant to claim the point if they pledge to create a regime that proactive solicits and presents programming created by and directly submitted by members of the public within the LPFM station’s service contour.

**x. Involuntary time share trigger point**

84. While we continue to support that LPFM applicants who are mutually exclusive (MX) should enter into settlement agreements, we know that not every LPFM applicant will

agree with the makeup of the organization that they are competing with for spectrum. Therefore, we recognize that not every MX situation will be settled without Commission intervention. We also recognize that some applicants may not want to make an investment in a LPFM station if they will not be able to broadcast full time or have to wait several years before they can go on the air. For that reason, we propose a trigger point to be able to allow applicants to show preference to participate in an involuntary time share arrangement if necessary.

85. In the event of a tie in an MX group involving the first nine points mentioned, the involuntary time share point will be reviewed. At this point, one of the following scenarios can take place:

IF	THEN
All equally qualified group members claim the trigger point.	All equally qualified members will move forward to the time share process.
All equally qualified group members do not claim the trigger point.	All equally qualified members will move forward to the time share process.
If one equally qualified member claims the trigger point and one or more members do not.	The channel is granted to the MX group member who claimed the trigger point as a singleton.
If more than one equally qualified members claim the trigger point and one or more members do not.	Those who claimed the trigger point move forward to the time share process. The remaining applicants are dismissed.
If no equally qualified group members claim the trigger point.	All equally qualified members will move forward to the time share process.

86. REC's proposed involuntary time share agreement definition allows an applicant who is willing to accept a time share agreement in lieu of being allowed to broadcast full time to claim this trigger point. This point will only be invoked in the event of a tie among the other 9 selection points.

**C. Creation of new MX groups through dismissal**

87. During the last window, we had noticed that there were times that if an applicant was dismissed from an MX group and it resulted in one station becoming a singleton or the forming of two smaller MX groups, the MX groups were not always treated separately and at times, the remaining singleton was not always granted. We want to make sure that in this window, new MX groups that are created through the dismissal of one “middle” application will be recognized and be able to compete on their own.

**VII. TIME SHARING**

**A. Successive licensing arrangements**

88. REC feels that the concept of successive licensing that was done in the previous filing window was a complete disaster. Many organizations did not want to have to construct their station to try to be first only to have to put the station in mothballs for up to 4 years while waiting for their turn on the channel. REC feels that we need to completely eliminate the successive licensing process and replace with the process that we are proposing.

**B. Settlements and voluntary time sharing**

89. With the additional channels now available due to second adjacent channel waivers and the potential for LP50, we hope the need for time sharing will be greatly reduced. Of

course, the optimum solution for LPFM applicants is to reach settlement agreements with other applicants and either move to different channels, different locations or agree to a time share and such agreements should continue to be encouraged. As we mentioned, we oppose partial settlements, consortia and point aggregation as it can lead to discriminatory behavior intended to silence voices that the other MX stations may agree with. If all members of the MX group cannot settle, the MX group will go to the involuntary time share process.

**C. Involuntary time sharing proposal**

**i. Overview**

90. When MX groups cannot agree on a voluntary time share or other settlement arrangement, we feel that it is in the public interest to allow more than one group to be able to build their station and go on the air, even if they are not able to use the channel 24 hours a day. We feel that our proposal<sup>87</sup> will implement a method that unlike successive licenses, will be a last resort option for LPFM stations to start broadcasting as soon as possible even if a settlement agreement could not be reached.

91. Applicants will reach the involuntary time sharing process if they were tied (including the trigger point) in the comparative review and were not able to reach a settlement agreement with other applicants. They will also reach the involuntary time share process if they

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<sup>87</sup> - Appendix C includes various process flows that outlines the time bidding and dropout handling processes.

were tied in the comparative review and no party in the MX group claimed the trigger point. These applicants will be handled differently if applications are dismissed during this process.

92. *Local community presence date.* Applicants must make a showing that indicates the organization's establishment date. This could be official IRS or state documents which show when the organization was formed or when incorporation papers were filed. That date will be considered the local community presence date.

### **ii. Definition of group participants**

93. In order to strike a balance between assuring the most voices are heard and the ability to properly manage the spectrum that carries those voices, REC feels that once an MX group reaches involuntary time sharing, an effective time share group should have no more than three members. We propose the following methods for defining the two or three groups that will have the first opportunity to share the channel.

94. *Two equally qualified applicants.* If there are two equally qualified members in each MX group, both applicants will be ranked by their local community presence date with the applicant having the oldest date as "Applicant 1" and the remaining member being "Applicant 2". Both applicants have a 12-hour involuntary time share slot. Applicant 1 will the opportunity to "bid" for their time slot and Applicant 2 will take the remaining 12 hour period.

95. *Three equally qualified applicants.* If there are three equally qualified members in the MX group, all three applicants will be ranked by their local community presence date with the applicant having the oldest date as “Applicant 1”, the second oldest date is “Applicant 2” and the remaining is “Applicant 3”. All three applicants will have an 8-hour involuntary time share slot. Applicant 1 will have the opportunity to bid on a time slot, Applicant 2 would then be eligible to take the 8 hours before or after Applicant 1’s bid and then Applicant 3 would be assigned the remaining time slot.

96. *Four or more equally qualified applicants.* If there are four or more equally qualified members in the MX group, the top three applicants based on local community presence dates will receive 8-hour involuntary time share slots following the three member process shown above. The remaining applicants will remain pending for a period of 4-years after the grant of the first construction permit in the group (they will be in “stand-by”). If one of the first three applicants is dismissed, their permit or license cancelled or their permit lapses, then the next ranked applicant will join the group of three using the process shown below.

97. *Tie breaker for local community presence dates.* In the event that two equally qualified applicants share the same local community presence date, the applicant that has a higher population covered by the 60dBu contour of the proposed station will receive the higher rank. If there is still a tie (which would likely happen if the stations are co-located), the applicants would be given a final opportunity to form a consortium. If they are unable to combine to a single license, the applicants will be dismissed. If any other applicants remain in



the group as pending, the members with the highest local community presence dates will then be brought up into the time share group.

### iii. Schedule “bidding” process

98. Once the group of two or three applicants has been determined, we propose to use a “bidding” system similar to choosing a work shift based on seniority. The applicant with the oldest local community presence date will receive the first priority (Applicant 1). To help speed up the bidding process, we would suggest allowing a LPFM applicant on their application or through a statement attached to their application if they are subject to an involuntary time share arrangement, what would be their first choice of operating hours if allowed to broadcast 12 hours a day and if allowed to broadcast 8 hours a day. The applicant must specify a single 12 and 8 hour period (e.g. 3AM~3PM, 6AM~6PM, etc. for 12 hours, 3PM~1AM, 7AM~3PM, etc. for 8 hours). Time slots cannot be split to different times of the day (e.g. 10AM~2PM and 6PM to 10PM for the same applicant).

99. *Schedule bidding process for a two-station (12-hour) time share group.* Applicant 1 will be asked to pick a continuous 12 hour period. If Applicant 1 does not specify a time slot on their application and otherwise does not make their desired time slot known, Applicant 2 will be given the opportunity to bid on the time slot. Whichever time slot the applicant chooses, the other applicant will receive the other 12 hour time slot. If neither applicant chooses a time slot,

the Commission would assign time slots as follows: Applicant 1, 2PM to 2AM and Applicant 2, 2PM to 2AM<sup>88</sup>.

100. *Schedule bidding process for a three-station (8-hour) time share group.* Applicant 1 will be asked to pick a continuous 8 hour period. If Applicant 1 does not specify a time slot, their application will be dismissed and Applicant 2 will move to the slot of Applicant 1 and Applicant 3 will move to the Applicant 2 slot. If there are any “stand-by” applicants, the one with the oldest local community presence date will move to the Applicant 3 slot and the current Applicant 3 moves to Applicant 2 and this process starts over again. If those are the only two remaining applicants, then the schedule bidding process for a two-station time share group is invoked.

#### **iv. Applicant drop-outs**

101. Under this plan, an applicant would be considered a “drop-out” if, during the time they are in a time share group, the application or permit is cancelled, the application is dismissed for other reasons, an original construction permit expires or a license is cancelled. In some cases, the drop-out handling policy varies based on whether applicants selected the trigger point.

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<sup>88</sup> - In the event of an MX group that crosses a time zone boundary, the eastern-most (earlier) time zone will be used as the reference for all of the applicants.

**1. 3-party, 8-hour time share group handling**

102. In the event that a station who is currently in a 3-party time share group drops-out and there are other applicants in stand-by, the applicant in stand-by with the oldest local community presence date will be granted a construction permit in the time slot that the drop-out station occupied.

103. In the event that a station that is currently in a 3-party time share group drops out and there are no other applicants in stand-by, and the two remaining applicants did claim the involuntary trigger point, the Commission could conduct a “mini-window” for new applicants to operate in the abandoned time slot.

104. In the event that a station that is currently in a 3-party time share group drops out and there are no other applicants in stand-by and the two remaining applicants did not claim the involuntary trigger point, the applicant with the oldest local community date (“Station 1”) will bid for a 12-hour time slot and they will be granted a modification to operate in that time slot. The other station (“Station 2”) would broadcast during the opposite 12 hours. If Station 1 does not select a time slot, Station 2 may bid for a 12 hour time slot and Station 1 would broadcast opposite of that. If neither station selects a time slot, then they will default to Station 1 broadcasting from 2PM to 2AM and Station 2 broadcasting from 2AM to 2PM.

**2. 2-party, 12-hour time share group handling**

105. In the event that a station who is currently in a 2-way time share group drops out and the remaining applicant did claim the involuntary time share trigger point, first, that application will be given the opportunity to modify their 12 hour time slot. The Commission will then conduct a “mini-window” for the unused time slot.

106. In the event that a station who is currently in a 2-way time share group drops out and the remaining application did not claim the involuntary time share trigger point, this applicant originally did not want to share time, which put them in a disadvantage during the point process. In this case, the remaining station is given authority to operate full time on this channel.

**3. Handling drop-outs on a single station full-time channel**

107. In the event of a drop-out of the only station on that channel, the Commission can open a “mini-window” to allow applications for new stations as well as allow opportunities for nearby LPFM stations to make major changes. If the mini-window attracts mutually exclusive applicants, then the proposed MX and Time Share handling process would be used.

**IX. CONCLUSION**

108. The Local Community Radio Act is going to open the door for many new LPFM stations which will be operated by community organizations, independent media centers, schools, colleges, faith-based organizations and public safety agencies by lifting many restrictions that these organizations have faced in an attempt to get their voices on the air. We feel that the LCRA has given the Commission some latitude to implement rules and policies to get as many qualified stations on the air. At the same time, the rules and policies must be written in a way where these LPFM stations will have a viable future.

109. The Commission has been given the authority to define what is considered interference and as we have shown, a minimal amount of population in an overlap area may be considered as acceptable. If LPFM is going to succeed, especially in core urban areas as well as in the outlying rural areas that are feeling the effects of being between multiple major markets, the Commission has to institute some discretion and we feel that such discretion will not undermine the LCRA.

110. We commend the Commission staff for thinking outside the box when proposing the new LP250. For many years, we have had a 250 watt LPFM concept on our plate, but we never anticipated that it would ever cross into the buffer zone. The Commission's proposed implementation of LP250 will assure that over one-third of the LPFM stations on the air today could upgrade but at the same time, we think that new applicants, especially those in rural areas, should be able to immediately apply for LP250 stations. LP250 should be available in core

urban areas only after it has been proven that LPFM spectrum is not needed for lower power stations.

111. For many organizations and locations, LP100 is too much and LP10 is too little. We agree with many proponents on both sides of the LPFM issue that LP10 stations are not viable due to their small service contours and their susceptibility to interference but at the same time, we need to have a “sub-100 watt” service. We feel that reengineering the LP10 service to LP50 would be the best way to continue providing a sub-100 watt service that will actually be more viable. As LP50 would be more viable, we hope that the Commission does not apply some of the same operating conditions that were planned for LP10 including lack of protection from higher powered LPFM and FM translator stations. We have taken the out of the box thought process that went into the Commission’s concept of LP250 and used it to concept the LP50 service as a viable service that will bring LPFM services deeper into urban cores where LP100 would not be able to reach.

112. We support Native Nations who are using LPFM to get their start into broadcasting as well as supporting initiatives to allow Native Nations to obtain additional LPFM stations or to have an LPFM station as well as full-power radio stations as long as those additional opportunities do not significantly preclude opportunities outside of tribal lands and at the same time, we support the ability of LPFM licensees to also obtain translators with assurances that this will not create speculative filing or other licensing abuses.

113. REC's proposed selection process is fair and straightforward. We feel that our proposed process will allow more diverse voices on the air while reducing acts of discrimination and elitism in an effort to shut out "unpopular" voices. Our proposed 10-point process may reduce the number of ties and will encourage LPFM stations to provide local programming, keep a staff presence, maintain records, present children's programming and open their doors to the public for programming. Our system also treats favorably organizations that wish to voluntarily share time with all other applicants on the same channel. With that, we oppose additional points for consortia, the aggregation of points and we support the elimination of the "successive" licensing process.

114. REC's proposed time sharing system takes much of the guesswork out of the timeshare process and speeds up the process as it mandates specific operating hours for stations if no agreements can be reached any other way. This way, no organization or political cause can "dominate" a channel when there are other voices wishing to have their turn. The REC proposed time sharing system addresses what to do in the event that a proponent within a time share group has to drop out.

115. REC feels that LPFM has an excellent future and we look forward to these service rules in place so soon the air will be filled with new, diverse and local voices in as many communities as possible.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michelle Eyre".

Michelle (Michi) Eyre  
Founder, REC Networks  
11541 Riverton Wharf Rd.  
Mardela Springs, MD 21837  
[mae@recnet.com](mailto:mae@recnet.com)

May 6, 2012.



**APPENDIX A  
PROPOSED SPACING TABLES FOR LP50**

To domestic full-service, LPFM and Class D stations:

Station class protected by LP50	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)	I.F. channel minimum separations
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
					Required	10.6 or 10.8 MHz
LP10 .....	15	18	9	10	None	None
LP50.....	20	20	12	12	None	None
LP100 .....	21	23	13	13	None	None
LP250.....	22	28	14	15	None	None
D .....	21	23	12	12	6	None
A .....	59	91	53	53	29	None
B1 .....	77	118	70	74	45	None
B .....	99	142	91	103	66	None
C3 .....	69	118	64	65	40	None
C2 .....	82	142	77	82	53	None
C1 .....	103	177	97	110	73	None
C0 .....	114	192	99	129	84	None
C .....	122	202	116	141	92	None

Additional spacing for full-service stations in Puerto Rico and U.S. Virgin Islands:

Station class protected by LP50	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations—10.6 or 10.8 MHz
	Required	For no interference received from max. class facility	Required	For no interference received from max. class facility		
A .....	72	109	66	66	42	None
B1 .....	84	127	78	83	53	None
B .....	126	178	118	143	93	None

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To FM Translator stations:

Distance to FM translator 60 dBu contour	Co-channel minimum separation (km)		First-adjacent channel minimum separation (km)		Second and third adjacent channel minimum separation (km)—required	I.F. channel minimum separations (km) 10.6 or 10.8 MHz
	Required	For no interference received	Required	For no interference received		
13.3 km or greater.....	35	66	27	34	21	None
Greater than 7.3 km, but less than 13.3 km ....	28	50	20	25	14	None
7.3 km or less	22	29	14	15	8	None

To Canadian stations:

Canadian station class	Co-channel (km)	First-adjacent channel (km)	Second-adjacent channel (km)	Third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
A1 & Low Power .....	41	28	21	20	3
A .....	61	48	41	40	6
B1 .....	73	60	53	52	8
B .....	87	75	67	66	11
C1 .....	109	96	89	87	19
C .....	119	106	99	99	27

To Mexican stations:

Mexican station class	Co-channel (km)	First-adjacent channel (km)	Second- and third-adjacent channel (km)	Intermediate frequency (IF) channel (km)
Low Power .....	24	15	9	3
A .....	39	31	25	6
AA .....	43	35	29	6
B1 .....	63	53	45	9
B .....	87	75	66	11
C1 .....	87	79	73	19
C .....	107	99	92	27

To full power TV channel 6 stations:

FM channel number	Class LP50 to TV channel 6 (km)	Class LP100 to TV channel 6 (km)	Class LP250 to TV channel 6 (km)
201	136	140	143
202	135	138	141
203	134	137	139
204	133	136	138
205	132	135	136
206	132	133	135
207	131	133	133
208	131	133	133
209	131	133	133
210	131	133	133
211	131	133	133
212	131	132	133
213	131	132	133
214	131	132	132
215	130	131	132
216	130	131	132
217	130	131	132
218	130	131	131
219	130	130	131
220	130	130	130

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To Class-A, Low Power TV and TV Translators operating on channel 6:

FM channel number	Class LP50 to TV Channel 6 (km)	Class LP100 to TV channel 6 (km)	Class LP250 to TV channel 6 (km)
201	94	98	101
202	93	97	99
203	92	95	97
204	91	94	96
205	90	93	94
206	89	91	93
207	89	91	92
208	89	91	92
209	89	91	92
210	89	91	92
211	89	91	92
212	89	90	91
213	89	90	91
214	89	90	91
215	89	90	90
216	89	89	90
217	89	89	90
218	89	89	89
219	89	89	89
220	89	89	89

**APPENDIX B**  
**PROPOSED §73.811 TEXT**

**§ 73.811 LPFM power and antenna height requirements.**

(a) LP50 stations: (1) *Maximum facilities.* LP50 stations will normally be authorized to operate with maximum facilities of 50 watts at 30 meters HAAT. An LP50 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 4.7 kilometers. In no event will an ERP or less than one watt will be authorized. No facility will be authorized in excess of one watt ERP at 258 meters HAAT.

(2) *Minimum facilities.* LP50 stations may not operate with facilities less than 1 watt ERP at 30 meters HAAT.

(b) LP100 stations: (1) *Maximum facilities.* LP100 stations will be authorized to operate with maximum facilities of 100 watts ERP at 30 meters HAAT. An LP100 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 5.6 kilometers. In no event will an ERP less than one watt be authorized. No facility will be authorized in excess of one watt ERP at 450 meters HAAT.

(2) *Minimum facilities.* LP100 stations may not operate with facilities less than 50 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 4.7 kilometers.

(c) LP250 stations: (1) *Maximum facilities.* LP250 stations will be authorized to operate with maximum facilities of 250 watts effective radiated power (ERP) at 30 meters antenna height above average terrain (HAAT). An LP250 station with a HAAT that exceeds 30 meters will not be permitted to operate with an ERP greater than that which would result in a 60 dBu contour of 7.1 kilometers. In no event will an ERP less than one watt be authorized.

(2) *Minimum facilities.* LP250 stations may not operate with facilities less than 101 watts ERP at 30 meters HAAT or the equivalent necessary to produce a 60 dBu contour that extends at least 5.7 kilometers.

(3) *Metropolitan Areas.* (i) During a filing window period for LP250 that also includes LP100, LP50 and/or LP10 stations, applications for new LP250 stations or upgrade applications for existing LP50 or LP100 stations will not be accepted from any location within 30 kilometers of the geographic center of the following locations:

Location	Latitude	Longitude
New York, NY.....	40-42'41"	74-0'23"
Los Angeles, CA.....	34-3'8"	118-14'34"
Chicago, IL.....	41-51'0"	87-39'0"
San Francisco, CA.....	37-46'30"	122-25'6"
Dallas, TX.....	32-46'53"	96-47'34"
Houston, TX.....	29-45'47"	95-21'47"
Atlanta, GA.....	33-44'56"	84-23'17"
Philadelphia, PA.....	39-57'8"	75-9'51"
Washington, DC.....	38-53'42"	77-2'12"

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Boston, MA.....	42-21'30"	71-3'37"
Detroit, MI.....	42-20'32"	83-9'39"
Miami, FL.....	25-46'26"	80-11'38"
Seattle, WA.....	47-36'23"	122-19'51"
San Juan, PR.....	18-28'6"	66-6'22"
Phoenix, AZ.....	33-26'54"	112-4'24"
Minneapolis, MN.....	44-58'48"	93-15'49"
San Diego, CA.....	32-42'55"	117-9'23"
Nassau-Suffolk, NY.....	42-46'52"	73-14'58"
Denver, CO.....	39-44'21"	104-59'3"
Tampa, FL.....	27-56'50"	82-27'31"

(ii) During a filing window period for LP250 that also includes LP100, LP50 and/or LP10 stations, applications for new LP250 stations or upgrade applications for existing LP50 or LP100 stations will not be accepted from any location within 20 kilometers of the geographic center of the following locations:

Location	Latitude	Longitude
St. Louis, MO.....	38-37'38"	90-11'52"
Baltimore, MD.....	39-17'25"	76-36'45"
Portland, OR.....	45-31'23"	122-40'33"
Pittsburgh, PA.....	40-26'26"	79-59'46"
Riverside, CA.....	33-57'12"	117-23'43"
Cincinnati, OH.....	39-9'43"	84-27'25"
Cleveland, OH.....	41-29'58"	81-41'44"
Salt Lake City, UT.....	40-45'39"	111-53'25"
Kansas City, MO.....	39-5'59"	94-34'42"
Las Vegas, NV.....	36-10'30"	115-8'11"
San Jose, CA.....	37-20'7"	121-53'38"
Columbus, OH.....	39-57'40"	82-59'56"
Austin, TX.....	30-16'1"	97-44'34"
Milwaukee, WI.....	43-2'20"	87-54'23"
Indianapolis, IN.....	39-46'6"	86-9'29"
Middlesex-Somerset-Union, NJ.....	40-34'21"	74-29'35"
Norfolk, VA.....	36-50'48"	76-17'18"
Jacksonville, FL.....	30-19'55"	81-39'21"
West Palm Beach, FL.....	26-42'54"	80-3'13"
Hartford, CT.....	41-45'49"	72-41'8"

(iii) Applicants for LP50 and LP100 within the areas specified in paragraphs (3)(i) and (3)(ii) of this section may, at the conclusion of the filing window period and application information is made public, amend an application for an original construction permit to specify LP250 if the applicant can make a showing that the proposed station meets all distance separation requirements as specified in section §73.807 of the Commission's rules for LP250 stations and in addition, the applicant can make a showing that the proposed facility is separated at least 31kilometers co-channel and 17 kilometers on the first-adjacent channel from any other proposed LPFM station of any class filed in the same filing window.

(iv) Licensees of existing LP50 and LP100 stations may, at the conclusion of the filing window period and application information is made public, file a minor change application to specify LP250 operation

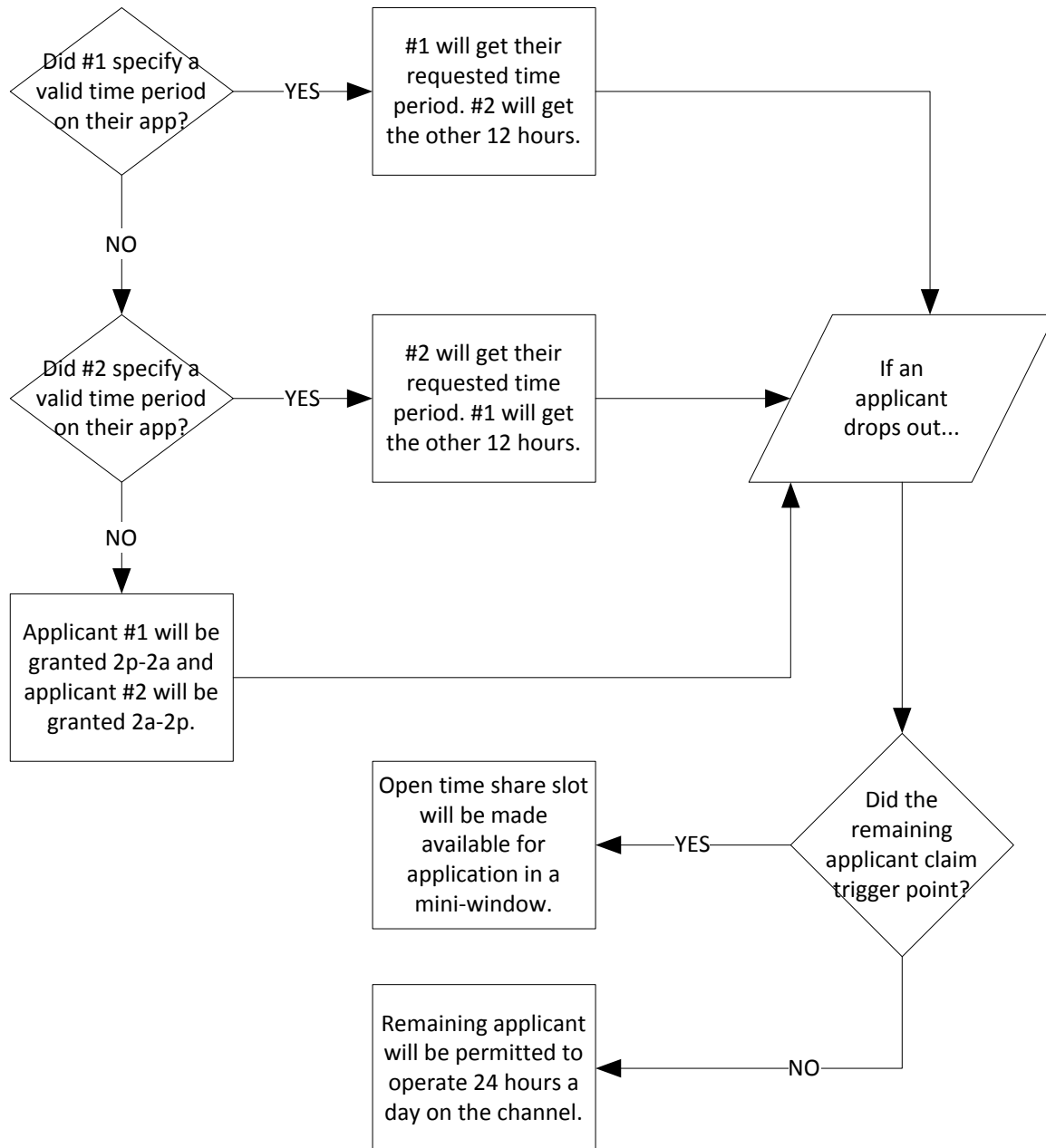
APPENDIX C

SAMPLE TIME SHARE SCENARIOS

*Example #1: Two equally qualified applicants – processing and drop-outs*

APPLICANT 1 – Community presence date: 12/31/2000

APPLICANT 2 – Community presence date: 12/31/2005

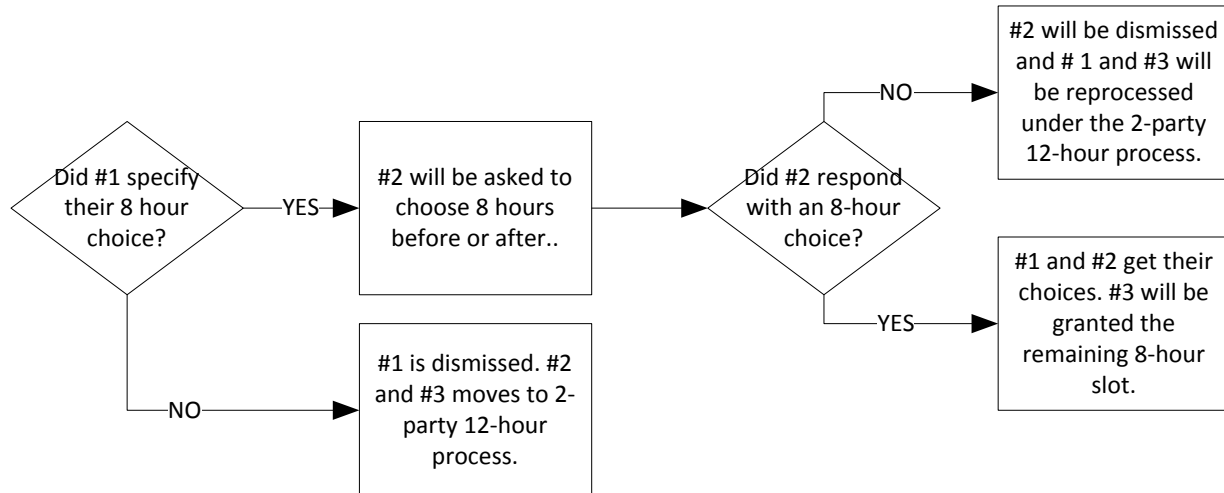


**Example 2: Three equally qualified – process**

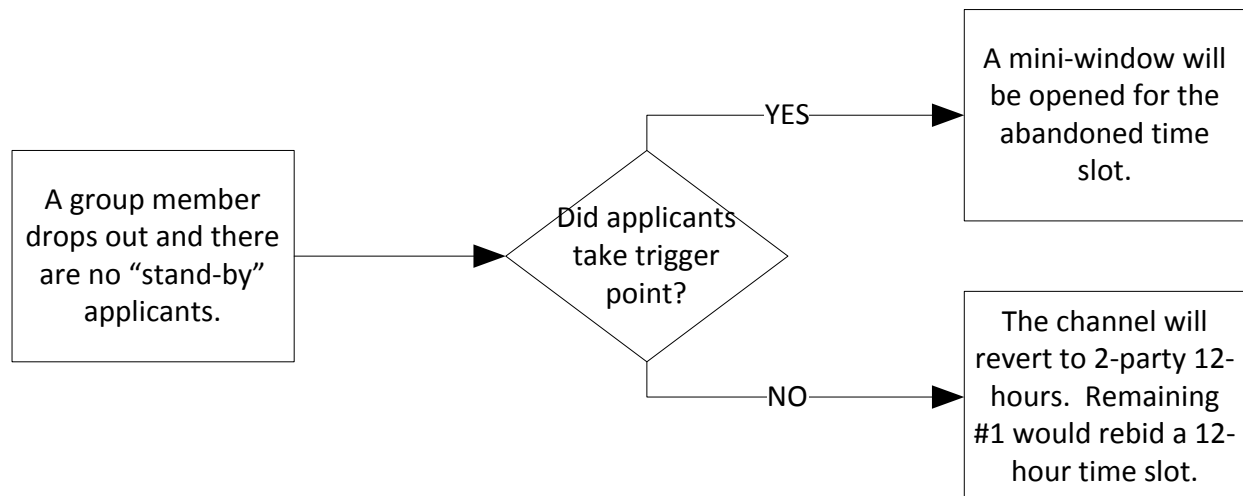
APPLICANT 1 – Community presence date: 12/31/2000

APPLICANT 2 – Community presence date: 12/31/2005

APPLICANT 3 – Community presence date: 12/31/2007



**Drop-outs:**





**Example #3: More than 3 equally qualified applicants – process:**

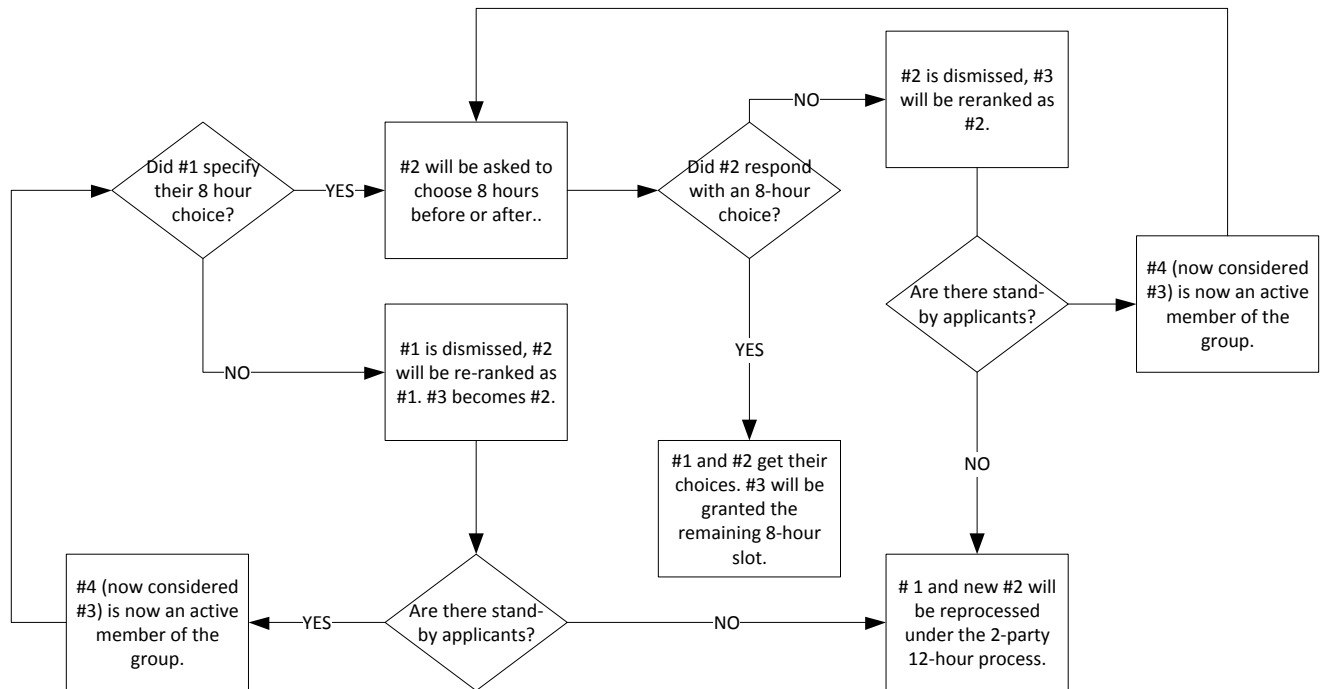
APPLICANT 1 – Community presence date: 12/31/2000

APPLICANT 2 – Community presence date: 12/31/2005

APPLICANT 3 – Community presence date: 12/31/2007

APPLICANT 4 – Community presence date: 12/31/2008

(APPLICANT 5 – Community presence date: 04/01/2009, etc.)



**Drop-outs:**



**APPENDIX D**

**REC SUPERCOORDINATOR 2012 SUMMARY  
POTENTIAL FOR LPFM IN SPECTRUM LIMITED METRO MARKETS**

The following chart shows the number of potential channels in each spectrum limited metropolitan market supporting REC’s position of reengineering LP10 into a new 50-watt LP50 service. We will compare it with the current FCC proposal to eliminate LP10 and limit LP250 to only upgrades. The area covered in each market is either their 30x30 or 20x20 grid.

Market	Grid Size	REC Proposed				FCC proposed
		LP250	LP100	LP50	Total	LP100
New York	30x30	0	2	5	7	3
Los Angeles	30x30	0	3	17	20	11
Chicago	30x30	0	7	4	11	8
San Francisco	30x30	0	6	18	24	11
Dallas	30x30	0	10	10	20	15
Houston	30x30	4	27	12	43	38
Philadelphia	30x30	0	8	9	17	11
Washington, DC	30x30	0	4	9	13	8
Atlanta	30x30	0	14	7	21	18
Boston	30x30	0	4	9	13	7
Detroit	30x30	0	0	2	2	1
Miami	30x30	0	23	8	31	30
Seattle	30x30	0	17	10	27	20
Phoenix	30x30	1	24	10	35	29
Minneapolis	30x30	0	19	12	31	23
San Diego (Mexico strip zone)	30x30	0	0	13	13	8
Nassau-Suffolk	30x30	0	0	2	2	0
Tampa	30x30	2	28	11	41	37
Denver	30x30	2	13	12	27	18
Baltimore	30x30	0	2	5	7	4
St. Louis	30x30	10	27	11	48	41
Portland, OR	30x30	1	11	10	22	17
Pittsburgh	30x30	1	2	19	22	8
Sacramento	20x20	0	7	6	13	12
San Antonio	20x20	0	12	8	20	15
Cleveland	30x30	2	8	6	16	15
Salt Lake City	30x30	0	3	3	6	3
Las Vegas	30x30	0	12	1	13	12
Kansas City, MO	30x30	8	22	7	37	32
Columbus	30x30	2	7	15	24	14
Austin	30x30	3	15	2	20	19
San Jose, CA	30x30	1	0	2	3	1
Milwaukee	30x30	4	16	7	27	24
Newburgh (Mid-Hudson Valley)	30x30	0	0	9	9	0
Indianapolis	30x30	3	12	12	27	19

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Market	Grid Size	REC Proposed				FCC proposed
		LP250	LP100	LP50	Total	LP100
Middlesex-Somerset-Union	30x30	0	1	3	4	1
Providence	30x30	1	1	11	13	5
Norfolk	30x30	4	13	6	23	17
New Orleans	30x30	1	22	4	27	23
West Palm Beach	30x30	1	6	2	9	6
Jacksonville	30x30	6	19	2	27	27
Monmouth-Ocean, NJ	30x30	1	0	7	8	3
Louisville, KY	20x20	6	5	5	16	13
Buffalo	30x30	1	2	6	9	4
Rochester, NY	20x20	5	7	4	16	13
Fort Myers	20x20	4	8	1	13	14
Dayton	30x30	2	2	13	17	6
Honolulu	30x30	4	14	0	18	19
Fresno	20x20	1	1	6	8	2
Albuquerque	30x30	5	6	1	12	11
Grand Rapids	20x20	2	4	8	14	8
Allentown, PA	30x30	0	1	6	7	2
Akron	30x30	3	4	3	10	9
Wilmington, DE	30x30	3	3	5	11	8
Harrisburg, PA	20x20	3	5	2	10	8
Little Rock	30x30	5	12	5	22	20
Syracuse	30x30	5	1	8	14	9
Gainesville	20x20	8	6	2	16	14
Colorado Springs	30x30	2	10	4	16	11
Spokane	30x30	8	10	1	19	19
Toledo	20x20	2	2	6	10	4
Wichita	30x30	4	18	2	24	24
Boise	30x30	4	5	0	9	9
York, PA	30x30	7	0	9	16	11
Corpus Christi, TX	20x20	10	2	2	14	13
Lancaster, PA	30x30	1	0	8	9	2
New Haven	30x30	8	4	13	25	19
Morristown	30x30	0	3	4	7	3
Oxnard, CA	20x20	6	0	4	10	7
Santa Rosa	30x30	2	1	3	6	3
Reno	30x30	2	1	2	5	3
Bridgeport, CT	30x30	0	1	9	10	3
Youngstown, OH	30x30	2	3	16	21	8
Reading	30x30	1	0	2	3	2
Trenton	30x30	0	1	5	6	2
Stamford, CT	30x30	0	0	0	0	0
Eugene	20x20	8	1	0	9	2
Danbury, CT	30x30	0	0	9	9	2
Santa Barbara	20x20	8	1	0	9	9

**APPENDIX E**

**REC SUPERCOORDINATOR 2012 SUMMARY  
CHANNELS IN SPECTRUM LIMITED MARKETS BY TYPE**

The following chart uses the same allotments identified in Appendix C and breaks them down by whether the channel would need a second adjacent channel waiver or if the allotment meets all minimum distance separation requirements. “Waiver” is the number of allotments that are short spaced only on the second adjacent channel while “Spaced” meet all minimum spacing requirements and therefore does not require a waiver.

Market	Grid Size	REC Proposed		FCC proposed	
		Waiver	Spaced	Waiver	Spaced
New York	30x30	7	0	3	0
Los Angeles	30x30	20	0	11	0
Chicago	30x30	11	0	8	0
San Francisco	30x30	24	0	11	0
Dallas	30x30	16	4	11	4
Houston	30x30	40	3	35	3
Philadelphia	30x30	17	0	11	0
Washington, DC	30x30	13	0	8	0
Atlanta	30x30	19	2	16	2
Boston	30x30	13	0	7	0
Detroit	30x30	2	0	1	0
Miami	30x30	31	0	30	0
Seattle	30x30	27	0	20	0
Phoenix	30x30	29	6	24	5
Minneapolis	30x30	26	5	20	3
San Diego (Mexico strip zone)	30x30	12	1	7	1
Nassau-Suffolk	30x30	1	1	0	0
Tampa	30x30	35	6	32	5
Denver	30x30	23	4	14	4
Baltimore	30x30	7	0	4	0
St. Louis	30x30	36	12	30	11
Portland, OR	30x30	22	0	17	0
Pittsburgh	30x30	19	3	8	0
Sacramento	20x20	13	0	12	0
San Antonio	20x20	18	2	14	1
Cleveland	30x30	15	1	13	2
Salt Lake City	30x30	6	0	3	0
Las Vegas	30x30	12	1	10	2
Kansas City, MO	30x30	33	4	28	4
Columbus	30x30	24	0	13	1
Austin	30x30	19	1	18	1
San Jose, CA	30x30	2	1	1	0
Milwaukee	30x30	23	4	20	4
Newburgh (Mid-Hudson Valley)	30x30	8	1	0	0

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Market	Grid Size	REC Proposed		FCC proposed	
		Waiver	Spaced	Waiver	Spaced
Indianapolis	30x30	22	5	17	2
Middlesex-Somerset-Union	30x30	4	0	1	0
Providence	30x30	11	2	5	0
Norfolk	30x30	20	3	15	2
New Orleans	30x30	25	2	21	2
West Palm Beach	30x30	7	2	5	1
Jacksonville	30x30	24	3	23	3
Monmouth-Ocean, NJ	30x30	2	6	2	1
Louisville, KY	20x20	15	1	12	1
Buffalo	30x30	8	1	4	0
Rochester, NY	20x20	15	1	11	2
Fort Myers	20x20	12	1	12	2
Dayton	30x30	14	3	6	0
Honolulu	30x30	18	0	18	1
Fresno	20x20	7	1	2	0
Albuquerque	30x30	12	0	10	1
Grand Rapids	20x20	12	2	7	1
Allentown, PA	30x30	5	2	2	0
Akron	30x30	10	0	9	0
Wilmington, DE	30x30	11	0	8	0
Harrisburg, PA	20x20	9	1	7	1
Little Rock	30x30	19	3	17	3
Syracuse	30x30	10	4	9	0
Gainesville	20x20	8	8	8	6
Colorado Springs	30x30	12	4	8	3
Spokane	30x30	17	2	16	3
Toledo	20x20	10	0	4	0
Wichita	30x30	23	1	22	2
Boise	30x30	8	1	8	1
York, PA	30x30	13	3	8	3
Corpus Christi, TX	20x20	13	1	11	2
Lancaster, PA	30x30	6	3	1	1
New Haven	30x30	23	2	17	2
Morristown	30x30	7	0	3	0
Oxnard, CA	20x20	6	4	5	2
Santa Rosa	30x30	4	2	3	0
Reno	30x30	5	0	3	0
Bridgeport, CT	30x30	9	1	3	0
Youngstown, OH	30x30	16	5	7	1
Reading	30x30	3	3	2	0
Trenton	30x30	6	0	2	0
Stamford, CT	30x30	0	0	0	0
Eugene	20x20	8	1	8	1
Danbury, CT	30x30	8	1	2	0
Santa Barbara	20x20	7	2	7	2
<b>TOTALS</b>		<b>1,127</b>	<b>149</b>	<b>831</b>	<b>105</b>

**APPENDICES F, G, H, I AND J  
ARE IN SEPARATE DOCUMENTS  
IN THIS FILING.**